Legal Aid Queensland Submission

Queensland Child Protection Commission of Inquiry

Legal Aid QUEENSLAND

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Introduction

Legal Aid Queensland (LAQ) provides legal information, advice and representation to financially disadvantaged people for a range of legal matters arising under State and Commonwealth law. LAQ is the largest provider of legal services for child protection proceedings in Queensland.

Part 1 of this submission will provide an overview of LAQ's child protection legal services including information on our grants of legal aid, funding and statistical information.

Part 2 of this submission will address issues relating to the operation of Queensland's child protection system in the area of child protection court and tribunal processes, in particular:

- the need for a court case management system, including a disclosure regime, supported by rules of court and/or practice directions that has the potential to significantly improve the efficient and effective conduct of child protection litigation, including assisting the early resolution of matters, as well as delivering better outcomes for children;
- the need for better and earlier legal support for staff of the Department of Communities, Child Safety and Disability Services (the Department) involved in child protection litigation;
- the need for specialisation of judicial officers;
- the need for the Childrens Court to be able to exercise the jurisdiction of the Queensland Civil and Administrative Tribunal (QCAT) when a substantive child protection matter is before the court, without reference from QCAT;
- the need for parents and children to have additional rights to apply to QCAT for review of administrative decisions about children, following the making of a reviewable decision, and
- the need for greater clarity and structure around the family group meeting and court ordered conferencing processes.

On 11 September 2012, Kathryn McMillan SC, Counsel Assisting the Inquiry, wrote to LAQ, requesting LAQ, as the peak body delivering child protection legal services in Queensland, to provide information to the Inquiry about the following:

- funding and service delivery;
- quality assurance;
- professional development;
- policy and law reform; and
- the Department as litigant

Part 3 of this submission will address those matters raised in Ms McMillan SC's letter, not addressed in Part 2.

In this submission, reference will be made to the *Report of the Protecting Victoria's Vulnerable Children Inquiry* (January 2012), conducted by the Honourable Philip Cummins, Professor Emeritus Dorothy Scott OAM and Mr Bill Scale AO, tabled in the Victorian Parliament on 27 January 2012. The report will be referred to as "the Cummins Report".

We note the Commissioner has expressed interest in early intervention programs in the child protection system. LAQ would refer the Commissioner to the pilot child protection and early intervention and advocacy program that it commissioned Ms Gwen Murray to develop a business case for. A copy of the executive summary of Ms Murray's report is attachment 1 to this submission.

Part 1 – Overview of Legal Aid Queensland's child protection legal services

LAQ's range of child protection legal services

LAQ provides a range of free legal services to Queenslanders including the following:

- preventative legal services – community legal education, and information and referrals through our website, state-wide call centre and customer service counters;
- early intervention – legal advice and minor assistance over the phone or face-to-face;
- lawyer assisted dispute resolution – for families facing separation, and for consumers and farmers;
- duty lawyer services – in criminal, family and administrative law;
- representation in courts and tribunals – including criminal law, family law, child protection, domestic violence, anti-discrimination, and consumer protection matters.

The following information explains the range of child protection legal services.

Preventative legal services

Members of the public can access free legal information about the child protection services outlined below on LAQ's website and by telephoning the LAQ call centre for the cost of a local call.

LAQ also provides community legal education services under its Community Legal Education Strategy. The strategy includes an annual CLE Collaboration Fund grants process to support CLE activities by regional legal assistance forums and community legal centres. An example of child protection related CLE funded by these grants was in 2011, when the Cairns LAQ office undertook a tour with other regional legal service providers of remote Aboriginal and Torres Strait Islander communities in Cape York, with one focus of the tour being on child protection law.

Early intervention

Free legal advice about child protection matters is available to people by telephone or on a face to face basis from LAQ's First Advice Contact Team in the Brisbane Office, and at our 13 regional offices.

Duty lawyer services

Legal Aid Queensland does not provide duty lawyer services in the area of child protection.

Grants of aid for dispute resolution and legal representation

LAQ provides legal representation services through a mixed service delivery model that utilises employed lawyers and private law firms (known as "preferred suppliers") to provide services.

LAQ has a number of employed lawyers in its Brisbane and regional offices providing child protection representation, including specialist lawyers based in Brisbane. All lawyers (both in-house and preferred suppliers) providing separate representation in child protection proceedings have completed the LAQ separate representative training course, and satisfied the requirements to be on a panel of accredited lawyers.

Services for legal representation are procured through grants of aid issued by LAQ's grants division to LAQ's employed lawyers or preferred suppliers. The administrative requirements for grants of aid are contained in LAQ Grants Handbook.

There are two parts of the handbook of relevance to the Commission, namely:

- The Policy Manual (which is a foundation component of the Grants Handbook) sets out the policies and guidelines including the basis of determination for grants of legal assistance, the means test, the merits test, and other guidelines. Key extracts are included in the submission below. The Policy Manual has recently been approved by the LAQ board and gazetted. The Policy Manual can be viewed at the website below.

- The broader Grants Handbook is currently under review, with a revised handbook expected to be completed by early 2013. However the section of the Grants Handbook on child protection, which is contained within the Civil Law area, contains a range of useful information about LAQ's grant of aid processes for child protection that may be of interest to the Commission.

Both documents are available at LAQ's website
http://www.legalaid.qld.gov.au/about/grants/Pages/Grants-policies.aspx

Grants of legal aid are available for:

- More extensive legal advice, where child protection proceedings have been commenced by the Department
- Representation of respondent parents at:
    - applications by the Department for a court assessment order
    - initial, other court ordered, final and post order review family group meetings
    - court ordered conferences
    - applications by the Department for an interim child protection order and final child protection order and preparation for and attendance at hearing
    - applications by the Department/parties for revocation or variation of child protection orders
    - appeals to the Childrens Court of Queensland.
- Separate representation of children at each of the abovementioned events
- Direct representation of children at each of the abovementioned events
- Representation of parents and children (both separate and direct representation) at negotiations, preliminary conferences and hearings in relation to applications to QCAT for review of decisions made by the Department following the making of a reviewable decision.

Figure 1 in attachment 2 sets out a summary of the key stages, eligibility tests and legal aid response to applications for legal aid.

The LAQ Policy Manual provides that the basis of determination of a grant of legal assistance for any area of law is as follows:

(1) Legal Aid Queensland may make a grant of legal assistance for an application for assistance that:
(a) is for assistance for a Commonwealth or a State Law Matter
(b) is within a Commonwealth Legal Aid Priority or a State Legal Aid Priority
(c) meets any guidelines set out in this Policy Manual that are relevant to the application
(d) meets the means test (unless otherwise specified),

(e) meets the merits test (unless otherwise specified); and
(f) meets the requirements of paragraph 3 below including the availability of funds.

(2) When determining whether a grant of legal assistance is to be made, Legal Aid Queensland should apply 1(a), (b), (c), (d) (e) and (f) in that order.

Note: The merits tests apply to all matters unless this Policy Manual indicates otherwise.

(3) If an application for a grant of legal assistance meets the above criteria, Legal Aid Queensland must determine, in accordance with this Policy Manual and after giving consideration to available Legal Aid funds and competing Legal Aid Priorities, whether a grant of legal assistance is to be made and, if so, the nature and extent of that grant. A grant of legal assistance will only be made if Legal Aid Queensland considers that sufficient funds are available.

(4) If there is no guideline relating specifically to a Legal Aid Priority, Legal Aid Queensland may make a grant of legal assistance in the manner, and to the extent, it considers appropriate in that priority area.

(5) The Chief Executive Officer may use his or her discretion to authorise a grant of legal assistance where the following exist:
• a court has made a recommendation that a person be granted legal assistance; AND
• the criteria in (1)(c), (d) or (e) are not met; AND
• there are exceptional circumstances.

As child protection matters are a State law matter, and are within a State Legal Aid priority, parts (1)(a) and (b) above are satisfied.

The guidelines referred to in part (1)(c) above are also contained in the LAQ Policy Manual as follows:

In order of priority, Legal Aid Queensland provides legal assistance in child protection matters as follows:

1. a) Separate Representatives for children (For these grants of legal assistance the means test does not apply)

b) Initial assistance to parties at the commencement of proceedings (Applications in this category are not subject to the merits test).

2 The representation of parents at proceedings for court assessment orders, initial and final family group meetings, and court ordered conferences. Applications in this category are subject to the means test and the following eligibility test

- *The Department is seeking either a custody or short or long-term guardianship order; AND either:*
  - *The applicant has reasonable prospects of challenging the type of child protection order sought, OR*
  - *One of the following special circumstances relate to the applicant or child*
    - *Aboriginal or Torres Strait Islander;*
    - *Non-English speaking;*
    - *Have a physical, intellectual or psychiatric disability or long-standing ill health which will prevent effective negotiation with the Department;*
    - *The applicant for aid is a child under 18;*
    - *Other special circumstances which will prevent effective negotiation with the Department.*

3. The representation of parents in contested child protection hearings. Applications in this category are subject to the means test and the following eligibility test.

- *The Department is seeking either a custody or short or long-term guardianship order AND*
- *It is more likely than not that the applicant will obtain a less intrusive order (or no order will be made) should the applicant be legally represented at the hearing AND*
- *There is a substantial difference between the order being sought by the Department and the less intrusive order the parent is likely to obtain.*

In order to meet this eligibility test, the applicant must be able to demonstrate that the order the Department is seeking is unlikely to be made because either:

- *the child abuse allegations cannot be substantiated, or*
- *the parent has addressed the child protection concerns and is now willing and able to protect the child from harm, or*
- *there is a suitable family member who should be given custody or guardianship of the child over the Department, or*
- *the order being sought by the Department is not the most appropriate least intrusive order.*

4. Direct representatives for children in contested child protection proceedings may be available in limited circumstances where the child is competent to provide instructions and the matter has been assessed as suitable for a grant of aid by a Manager, Grants. In assessing suitability, a Manager, Grants will take into consideration whether there is a current separate representative involved in the proceedings.

5. Legal assistance may be available for the following other matters

a. Representation at a Family Group Meeting once per year to assist in communicating with the department where the applicant or the child has special circumstances as detailed in (2) above. Applications are not subject to the merits test.

b. Respond to an application by the Department to extend a Child Protection Order by a substantial period.

c. (i) Application by child or parent to revoke or vary a Child Protection Order.

(ii) Application by the Department to revoke a Child Protection Order and make a new Order in its place.

d. (i) Appeal by the parties against a Child Protection Order (not a Temporary Assessment or Court Assessment Order).

(ii) Appeal by the Separate Representative or the child against a Child Protection Order (not a Temporary Assessment or Court Assessment Order). Applications are not subject to the means test.

The LAQ means and merit test referred to in (1)(d) and (e) of the basis for determining grants of legal assistance are available for the commission's consideration if required.

2008-09 review of LAQ's guidelines for child protection grants of aid

In 2008 LAQ conducted an internal review into the response to child protection which resulted in a new response to the funding of child protection matters. The recommendations of this review were adopted by the LAQ Board from 1 September 2009.

The principal change to the LAQ response was the requirement for proceedings to be on foot as the initial eligibility test for funding. Initial legal advice continued to be available through the LAQ advice program.

Once proceedings are on foot an initial grant of legal assistance is available for a solicitor to read material, provide the client with advice and obtain their instructions regarding their child protection proceedings. Initially this grant is limited to three hours however additional funding may be available if the material is voluminous. This grant replaced the previous "negotiations" grant.

Prior to the review, the Family Group Meeting (FGM) pilot provided for legal representation at multiple FGMs at all stages of the proceedings, including where there were no current proceedings. Following the review, aid for FGMs was restricted to an initial FGM, a final FGM and any other FGM ordered by the court. Post-order aid is also available for an annual FGM to assist with case planning.

Special circumstances grants of aid

The LAQ Policy Manual *Basis of Determination of a Grant of Legal Assistance* provides at section 5 that the Chief Executive Officer may use his or her discretion to authorise a grant of legal assistance where the following exist:

- A court has made a recommendation that a person be granted legal assistance; and
- the criteria in (1)(c) [guidelines], (d) [means] or (e) [merits] are not met; and
- there are exceptional circumstances.

Under section 106(1) of the *Child Protection Act 1999,* (CPA) the Childrens Court must ensure the child's parents and other parties to the proceeding, including the child, understand the nature, purpose and implications of the proceeding, and any order or ruling made by the court.

Following comments made by judges of the Childrens Court of Queensland in *KE and SW v Department of Communities (Child Safety Services)* [2011] QCHC 2 (KE and SW) and *KD v Department of Child Safety and Others* [2011] QChC 8 (KD), the Chief Executive Officer of LAQ has used the above discretion to approve grants of legal aid for representation of parties to assist the court to fulfil its obligations under section 106(1) of the CPA.

In KE and SW, parents who were incapable of effectively participating in the proceedings due to an intellectual disability, were opposing the Department's application for a child protection order. The judge commented that despite repeated efforts by different magistrates to obtain legal representation for KE and SW, they were unable to obtain legal aid and were forced to appear at the hearing as unrepresented litigants.

In KD, a parent with an intellectual disability consented to the Department's application for a child protection order because she believed she had no other option. The judge was of the view that the parent was overborne by the Department. KD had been granted legal aid for the early stages of the proceedings, but was refused legal aid for the hearing on the basis of lack of merit.

As a consequence of the above cases, the court now notifies LAQ when there are parties to contested child protection proceedings who have a significant intellectual disability, or other special circumstances. On receipt of an application for legal aid, grants officers, who make decisions about granting legal aid, refer the application to the CEO through the Director, Grants, for consideration of a special circumstances grant of aid. Representation for parties at contested child protection proceedings has been approved in a number of cases which fall into this category since implementation of this process in September 2011.

Funding of LAQ's child protection legal services

LAQ is funded by the Queensland Government for state law matters and by the Commonwealth Government for federal law matters.

State funding

The funding of child protection matters is a priority under the agreement between the State of Queensland and LAQ. LAQ funds child protection legal services from within its general State funding allocation, as it is not provided with any specific funding for this purpose. Other major areas of State law which are funded from LAQ's State funding allocation are criminal law and domestic violence.

In 2011-12, LAQ spent $4.081M on child protection related grants of aid, which accounts for 9.17% of State funding.

LAQ's records indicate that on commencement of the *Child Protection Act 1999*, the Queensland Government provided LAQ with $250,000 of one-off funding to assist in the establishment of child protection legal services in response to the Act. No further funding has been provided to LAQ for child protection services since that time.

Commonwealth funding

Under the National Partnership Agreement on Legal Assistance Services between the Commonwealth and the States and Territories (NPA), the Commonwealth's priorities for family law matters include state law matters in which a child's safety or welfare is at risk and there are other connected family law priorities for which a grant of legal assistance could be made. Other connected family law priorities are matters that involve a grant of legal aid to assist:

- children, including the appointment of a court appointed independent childrens lawyer;
- people who have experienced, are experiencing or are at risk of experiencing, family violence; and
- family members resolve complex issues relating to the living arrangements, relationships and financial support of their children.

While this creates some capacity for LAQ to utilise Commonwealth funding for child protection matters where connected with a family law matter, Commonwealth funding has not been utilised this way to date, because the service has to be of a type that is a new service not provided prior to the current NPA, and LAQ has not developed any new services in the child protection area. In any event, LAQ is currently utilising all of its Commonwealth funding for Commonwealth matters. Therefore there is currently no capacity to utilise Commonwealth funding for child protection matters.

Statistics for LAQ's child protection grants of aid and reports

Attachment 2 contains statistics on grants of legal aid for all stages of the child protection legal process for which aid is available, since the commencement of the *Child Protection Act 1999.*

Social assessment reports

Table 5 in attachment 2 contains statistics on the commissioning of social assessment reports by LAQ since 2002-03.

All of the social assessment reports funded by LAQ have been for separate representative matters.

Social assessment reports are a significant expense for LAQ, totalling $0.423M or 10.36% of LAQ's total child protection expenditure, in 2011-12.

The reports provided by separate representatives in child protection matters and funded by LAQ make a significant contribution to the information before the court to assist it to come to appropriate determinations in the best interests, safety and wellbeing of children. LAQ understands that in New South Wales and Victoria, these reports are usually funded by the State government and not the local Legal Aid Commission. It may be useful to reconsider the approach taken in Queensland to the funding of social assessment and other reports. If LAQ were not required to fund these reports, there would be more funding available in LAQ's child protection budget allocation to fund additional grants of aid for legal representation.

One option would be to provide the Childrens Court with a fund for the provision of social assessment reports in child protection matters. If the court had control of the funding for these reports it could ensure that the funding was applied exclusively for this purpose and that the reports were commissioned independently for the purpose of informing the court.

Part 2 – Court and tribunal processes

This part of the submission will address issues relating to the operation of Queensland's child protection system in the area of child protection court and tribunal processes, identifying certain areas in which LAQ is of the view that there is a need for reform.

LAQ notes that Clause 6 of the Terms of Reference of the Inquiry provide that the Commission's:

> recommendations should take into consideration the Interim Report of the Queensland Commission of Audit and the fiscal position of the State, and should be affordable, deliverable and provide effective and efficient outcomes.

The following proposals by LAQ for the reform or improvement of child protection court and tribunal processes by the adoption of a court case management system and a proper disclosure regime should not have any cost impacts for the child protection system in terms of their implementation, but should save the system time and resources through the early resolution of matters and the efficient management of litigation.

LAQ also considers that a focus on early resolution through improved case management and disclosure will be beneficial to children by minimising their exposure to unnecessary court processes.

Court case management system with a comprehensive disclosure regime

It is submitted that one of the most significant improvements to the child protection court process would be the establishment of a court case management system, supported by rules of court and practice directions. A case management system for child protection litigation would establish a defined litigation process by outlining a sequence of events that would progress matters in a child focussed, efficient and timely way.

Over recent years, LAQ has sought the development of rules to introduce court case management and a proper disclosure regime for child protection matters.

We submit that to achieve an effective outcome in these areas we request that the Commission make prescriptive recommendations about the content of any future Childrens Court Rules, including the essential features of a court case management system and disclosure regime.

The case management system should provide for:

- Early identification and location of parties and relevant non-parties and the joining of applications.

Currently, where different Child Safety Service Centres (CSSCs) are dealing with different siblings, the applications can be filed in and dealt with by different courts. This risks different decisions being inappropriately made in relation to siblings. There are also cost and efficiency implications for the Department and other stakeholders in the system, including the courts and LAQ.

Under section 114, the Childrens Court has power to transfer proceedings to the Childrens Court sitting at another place and under section 115 the court has the power to hear two or more applications together. It is submitted that it should be standard practice, supported by the case management system, for the Department to notify the parties or their legal representatives, and the court, that there are other siblings subject to applications/intervention by another CSSC and or filed

in court in another place, so that the question of whether the court should exercise its powers under sections 114 and 115 can be considered at a directions hearing.

See case study 1 in attachment 7.

- Early consideration of the need for legal representation for parents, for example for the fulfilment of the court's obligation under section 106 of the CPA to ensure that parties understand the proceedings, and children, including separate and direct representation of children, to avoid delays.

- Early resolution of disclosure issues, including obtaining directions in relation to disclosure and the need for obtaining expert assessments and reports such as medical, psychiatric and social assessment reports.

There is currently no proper disclosure regime for child protection litigation. Consequently, legal representatives for parties must rely on subpoenas for the production of documents held by the Department, which seems to be interpreted as a request under section 190 of the CPA which, it is submitted, was intended to provide for a process by which third parties involved in other legal proceedings can seek access to information held by the Department, rather than a disclosure regime for child protection litigation.

See case study 2 in attachment 7

It is LAQ's submission that appropriate processes for discovery or disclosure should be adopted, similar to those in the criminal jurisdiction (Criminal Practice Rules 1999), proceedings pursuant to the *Family Law Act 1975* and the consequential Family Law Rules 2004, and the Uniform Civil Procedure Rules (UCPR). It should be acknowledged that there is an implied undertaking between the parties and court, that the State, represented by the Department, has a general duty of disclosure, which should require, in addition to any filed affidavits, a duty to disclose the following types of documents:

- Previous court orders and judgments/reasons;
- Any relevant assessment materials;
- Relatives and friends materials (e.g., a genogram);
- Other relevant reports and records;
- Single, joint or inter-agency materials (e.g., health and education documents)
- Records of discussions with the family; and
- Any other key Department minutes and records for the child, including previous case plans and reviews of those case plans.[1]
- Early identification of the issues, including the threshold issue of whether a child is in need of protection, and whether this is contested and consideration of whether it is an appropriate matter for an early fact finding hearing to determine the threshold issue.
- Early consideration of alternative dispute resolution (ADR) and early referral of the matter to ADR, with clarity needed around the role of family group meetings in the litigation process, particularly in relation to whether such meetings should take place, and in what form, before or after the resolution of the threshold issue of whether the child is in need of protection.

[1] (Source We have based these suggestions on PRACTICE DIRECTION 12A – PUBLIC LAW PROCEEDINGS GUIDE TO CASE MANAGEMENT: APRIL 2010 – Issued by the United Kingdom's Ministry of Justice. The above list is a modified version of that in the Public Law Outline to reflect local processes and materials. See http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a#IDA4PWKC. The practice direction details the UK Case Management of Public Law (child protection).)

See page 16 for further submissions about family group meetings.

- Guidance on the identification of non-parties who can make submissions under section 113 of the CPA.

  Section 113 of the CPA provides that the Childrens Court may hear submissions from non-parties, defined as a member of the child's family or anyone else the court thinks can inform it on any relevant matter, and that the court may allow the non-party to view a document or other information before the court. Subsection (3)(d) provides that the court may allow a non-party to view a document or information if the court is satisfied that each person to whom the document or information relates has been informed that it may be viewed by the non-party and each person to whom the document or information relates has been given a reasonable opportunity to make submissions about the non-party being allowed to view the document or information.

  It is submitted that there needs to be clarity as to who is a "person to whom the document or information relates". Section 113 is interpreted differently by different magistrates in the Childrens Court constituted in different places, some interpreting the provision widely and requiring the notification of persons of questionable relevance to the issue to be notified and others interpreting the provision more narrowly.

  It is also submitted that there should be guidance on how far the court must go to identify 'each person to whom the document or information relates'.

  It is further submitted that there should be clarity around when and where documents and information are to be viewed, for example, at the Department's CSSC or in the court registry, and as to whether copies of the documents should be provided to a person to whom they relate, to consider and make submissions to the Court or whether the non-party is allowed to copy them.

A similar case management system to that which should be applied in relation to the Childrens Court, should also be applied in relation to child protection matters before QCAT.

Consistent definition of "parent" throughout the Act and legal process

The Act defines "parent" at multiple sections throughout, with the definition provided in section 11, within the Basic Concepts part of the Act, subsequently narrowed to a distinct set of people when there is a proceeding before a court. This narrower definition makes no provision for the court to give leave to a person who meets the wider s 11 definition to be given party status.

When considering who is a child in need of protection pursuant to the basic concepts of the Act, under sections 9 and 10 (that is a child who has suffered harm, is suffering harm or is at an unacceptable risk of suffering harm, and does not have a parent able and willing to protect them from that harm), that consideration must include a person or persons exercising parental responsibility for a child, or a person who, under Aboriginal tradition or Torres Strait Islander custom is regarded as a parent of a child (i.e. the broader s 11 definition). However, if there is an application made for an assessment order or a child protection order, people in a relationship with the child as described above do not satisfy the narrower definition of parent in ss 23, 37, 51AA, 51F, 52 or 205, and as a result are not entitled to be served with the application and materials and do not have a right of appearance on any application.

For instance, for the purposes of child protection proceedings the following people who exercise parental responsibility in respect of a child are not regarded as a parent of the child or to have a right of appearance:

- grandparents, aunts and uncles, or other extended family members;
- de facto parents;
- Aboriginal or Torres Strait Islander people who under tradition or custom are regarded as a parent of a child; and
- a parent in a same sex relationship who is not named on the child's birth certificate.

It is LAQ's submission that the narrow definition of "parent" that applies to child protection proceedings potentially excludes important people in the lives of children the subject of proceedings who care for, and exercise parental responsibility in respect of, those children. The definition of parent should be broadened by empowering the court to give leave to people in these relationships with the subject children a right of appearance in the proceedings.

See case studies 3 and 4 in attachment 7.

Specialisation of judicial officers

LAQ supports the specialisation of Childrens Court Magistrates. In this regard it is noted that the Brisbane Childrens Court Magistrate is appointed for a period of five years and in some of the larger regional Magistrates Courts, where there are a number of magistrates, one magistrate tends to be allocated to hear Childrens Court matters. However, this practice is not applied consistently between courts, resulting in magistrates rotating in and out of the jurisdiction on a sometimes weekly basis.

We refer the Commissioner to recommendation 56 of the Cummins Report that recommends the Victorian Childrens Court develop a case docketing system that will assign one judicial officer to oversee one protection matter from commencement to end.

LAQ supports the adoption of a case docketing system in Queensland. However, we are of the view that greater specialisation of magistrates could be achieved by allocating individual magistrates responsibility for child protection matters.

LAQ also supports the provision of annual training on child protection issues for all magistrates, at least until a system of magistrate specialisation is fully developed, after which time the training could be provided to the specialist Childrens Court magistrates.

Less adversarial trial

Section 5A of the CPA provides that the main principle for administering the Act is that the safety, well-being and best interests of a child are paramount. This is supported by section 104(1) which provides that in exercising it's jurisdiction, the Childrens Court must have regard to the principles stated in sections 5A to 5C to the extent to which they are relevant, and by section 105(1) which establishes an inquisitorial court process by providing that the Childrens Court is not bound by the rules of evidence but may inform itself in any way it thinks appropriate.

It is submitted that the above provisions could be enhanced, and the best interests of the child further protected, by the introduction of the Less Adversarial Trial (LAT) concept for the Childrens Court, similar to that now operating in the Family Court. A LAT is more closely directed by the judicial officer and encourages the parties to focus on solutions that are in the best interests of the children. Consideration could be given to amending the CPA to insert principles for conducting child-related proceedings, similar to those in section 69Z of the *Family Law Act 1975* (Cth).

We also note that recommendation 57 of the Cummins report proposes empowering the Victorian Childrens Court to conduct hearings in this manner.

Compliance with model litigant principles

It is LAQ's submission that the Department should be required to comply with the model litigant principles in the conduct of all of its child protection litigation. The model litigant principles are outlined at the following web address. http://www.justice.qld.gov.au/corporate/model-litigant-principles

Childrens Court to exercise review jurisdiction of QCAT

Under section 99M of the CPA, if a review application is before QCAT and the matters to which the review relates are also before the court, the President of QCAT must suspend the Tribunal's review if the matters would effectively decide the same issue and the matters will be dealt with more quickly by the court.

It is submitted that the review jurisdiction exercised by QCAT following the making of a reviewable decision by the chief executive, should be able to be exercised by the Childrens Court, whenever it is dealing with an application for a child protection order, without reference from QCAT. This could include the Court appointing a person/s having a special knowledge or skill to help the Court pursuant to s107 of the Act, to replicate what happens at QCAT where a review application can and is often listed before a panel of three members, usually a legal member and two social scientists/psychologists. This will allow the court to make a decision dealing more comprehensively with the whole of the circumstances of the child, which is submitted would be more efficient and in the better interests of the child.

See case study 5 in attachment 7.

Standing to apply for review of certain decisions

It is further submitted that the persons with standing to apply to QCAT under Chapter 10, Part 1 of the *Commission for Children and Young People and Child Guardian Act 2000* for review of certain decisions made under the Act should be expanded. In particular, the standing to apply for a review of a decision under section 14 (decision of the Chief Executive not to investigate a notification) and section 122 of the Act in relation to a child in care being cared for in a way that meets the statement of standards should be expanded to include the parents of the child and the child, in addition to the Children's Commissioner.

Family group meetings and court ordered conferences

Family group meetings

Under section 51G of the Act, the purpose of a family group meeting (FGM) is to provide family based responses to children's care and protection needs and to ensure an inclusive process for planning and making decisions relating to children's well-being and protection and care needs. The case plan also becomes a key piece of evidence in any litigation resulting from the Department's intervention. Accordingly, an FGM convened to develop a case plan should result in a plan that is:

1. meaningful and effective for the family;
2. makes use of the framework relied upon in the 'Signs of Safety' Child Protection Practice Framework, which at its simplest can be understood as containing four domains for inquiry:
    a. What are we worried about? (Past harm, future danger and complicating factors)
    b. What is working well? (Existing strengths and safety)

c. What needs to happen? (Future safety)
d. Where are we on a scale of 0 to 10, where 10 means there is enough safety for child protection authorities to close the case, and 0 means it is certain that the child will be (re) abused (Judgment)[2]

3. addresses the four domains in plain language that the family, including the child/ren if appropriate, can understand and make use of in meeting the child/ren's protection and care needs – making the child/ren safe; and

4. sets out a clear method to evaluate the success of the plan, including what would indicate some small progress had been made immediately (also taken from the Signs of Safety framework).

It is submitted that:

- currently there is an over-emphasis on procedure that seems to be designed to satisfy the requirements of Part 3A of the Act, in particular sections 51B, 51D, 51H and 51M, in an overly bureaucratic exercise that is not adapted to the needs of the family, which results in an FGM process that does not easily assist the family to understand the Department's concerns and contribute meaningfully to family based solutions. This problem may be able to be overcome by FGMs being coordinated by private convenors external to the Department and through utilising of a Signs of Safety type model.
- the current process also inhibits the Department in gathering evidence and linking that evidence to proposed solutions. This problem may be able to be overcome by the Department having access to robust legal advice at the FGM stage of the child protection legal process;
- the structure and language of case plans should be reviewed to ensure that plans clearly outline the Department's concerns and expectations, how the family can address the concerns and meet the expectations and how this will be measured, in language that is sufficiently detailed but clear and unambiguous, and most importantly, able to be understood by the family, including the child/children if appropriate; and
- The same requirements for development of a case plan should apply to the review of case plan.

See case study 6 in attachment 7.

Court ordered conferences

It is suggested that the Court Ordered Conference (COC) process could be more useful in the child protection litigation process. There is little guidance in the Act about the purpose of COCs. Section 69(1)(e) states that at the time of adjourning child protection proceedings, a court can order a conference be held between the parties before the proceeding continues "to decide the matters in dispute or to try to resolve the matters". There are no other references in the Act to the purpose of COCs.

Section 72(1) of the Act provides for the filing of a report of the COC "containing the particulars prescribed under rules of court made under the *Childrens Court Act 1992*." Such rules might provide some additional guidance about the objective of COCs, however, there have been no rules made specifying the particular issues that COC reports should address. It must also be noted, currently, any report filed by the chairperson of the conference is not served on the parties to the proceedings.

[2] Source – Government of Western Australia Department for Child Protection, *The Signs of Safety Child Protection Practice Framework,* (September 2011, 2nd Edition): http://www.signsofsafety.net/westernaustralia

In terms of the actual process adopted for the conduct of COCs, there is no further specific guidance in the Act, nor in the Childrens Court Rules. There is no published policy, standard process or key principles on the conduct of COCs. The only publication that LAQ is aware of is the Protocol for scheduling conferences 2012 that is accessible on the Queensland Courts website.[3] This should be contrasted with Youth Justice Conferencing, and the material that is available in respect of them, such as the Youth Justice Conferencing Practice Manual.[4]

From the perspective of representing parents and children involved in child protection litigation, it is LAQ's submission that the first issue to be resolved at a COC should be whether the threshold issue of whether a child is need of protection has been established by the Department, and is accepted by the parents. Following that, the other objectives of deciding the specific issues in dispute or resolving the matter can be considered.

However, none of those matters can be addressed at a COC unless there has been full disclosure by the Department of the evidence it has in respect of its intervention in the family. Lawyers representing parties in child protection proceedings cannot advise their clients to mediate about and/or accept untested allegations by Departmental officers if the evidentiary basis of the allegations has not been clearly disclosed. Without appropriate disclosure, there cannot be effective engagement in a COC.

It is submitted that to be most effective, COCs should fit within a broader court case management process supported by appropriate processes for discovery or disclosure (see previous submissions in relation to disclosure at p. 1). Parties should be required to file all the material they seek to rely on in a matter, for example, affidavits, including affidavits in reply by parents and reports and assessments. COCs would offer a far more effective opportunity for settlement discussions if all parties have disclosed their positions and evidence in advance.

The current model, where material is not filed until shortly before a trial, encourages settlement discussions on the first day of hearing rather than at the COC, causing matters to take longer to resolve and burdening the court with trials that must be catered for in the court diary but regularly do not proceed to a full hearing.

It is LAQ's submission that an initial COC may be required early in proceedings to deal with the threshold issue of whether the child is in need of protection, or disputes in relation to the interim placement and contact arrangements. A second COC should occur prior to final hearings to provide a final opportunity to settle the matter, and if that cannot be achieved, to narrow the issues in dispute to reduce the time of any hearing. In complex matters, there may be benefit in COCs occurring at appropriate times in the course of the matter prior to interim hearings. The timing of COCs would be determined by the court as part of the overall case management of the proceedings by the court using a fully developed case management process established under the Childrens Court Rules.

LAQ is concerned that the current provisions, s 69(2) of the Act and rule 19 of the *Childrens Court Rules 1997*, only require that a chairperson of a COC have qualifications or experience as follows:

- an ability to facilitate voluntary dispute resolution processes;
- knowledge and understanding of the issues and processes for the protection of children under the *Child Protection Act 1999*; and
- an ability to communicate effectively with a broad range of people.

[3] http://www.courts.qld.gov.au/about/publications
[4] The manual is accessible on http://www.justice.qld.gov.au/youth-justice/youth-justice-conferencing. Also see: http://www.justice.qld.gov.au/__data/assets/word_doc/0007/154168/yjc-framework-manual.doc

There is no requirement for the chairperson to hold any formal qualifications in respect of dispute resolution or belong to a professional body with ongoing professional development obligations, and no requirement on them to have an ability to communicate effectively with children and young people.

This in LAQ's experience, when combined with the lack of any specific guidance in the Act or Rules, and no published policy, standard process or key principles on the conduct of COCs, can result in the COC not being an effective opportunity for settlement of the proceedings or issues in dispute.

LAQ also notes that it considers that face to face COCs are more appropriate than telephone conferences but that face to face COCs are not always available in some regional areas.

Part 3 – Response to questions in Ms McMillan's letter

This part of the submission will address those matters raised in Ms McMillan SC's letter.

Funding and service delivery

LAQ service delivery for parents, children and young people including:

Question – What budget allocation from the State does LAQ receive for child protection?

See page 8-9

Question – Is LAQ able to utilise Commonwealth funding for child protection? If it is able to utilise that budget, does it?

See page 9.

Question – The current process for legal advice provided on child protection issues, especially with respect to intervention with Parental Agreements and Care Agreements.

See page 4 and attachment 2.

Question – Statistics on grants of aid for key litigation events such as family group meetings, court ordered conferences, mentions and trials.

See attachment 2.

Question – The current process for application of the merit test for funding of child protection matters (especially in light of recent judgments of the Childrens Court criticising lack of legal aid funding).

See pages 4-8.

Question – Statistics on the number of social assessment reports commissioned by separate representatives and family reports commissioned by independent children's lawyers and the cost to LAQ. A review of the data pre and post the 2004 CMC Report would be of great assistance.

See page 9-10 and attachment 2.

Question – Statistics on the number of separate representatives appointments pre and post the 2004 CMC Report.

See attachment 2.

Question – Has LAQ scoped or considered any particular service delivery initiatives that it would like the Commission to have information about?

LAQ approved the development of a business case for a pilot child protection early intervention and advocacy program to address the NPA objective of early intervention legal services.

The summary report on the proposed project, prepared by Gwenn Murray Consulting is attachment 1.

Quality assurance (including case management standards)

Question – Information about how LAQ audits compliance with the case management standards for those representing parents, children and young people (for example, whether lawyers acting for children and young people are meeting with them and whether file searches are conducted by separate representative before the commissioning of a social assessment report.

See attachment 3.

Question – Information on where the case management standards are stored and to what extent it is publicly available to the legal profession, clients and child protection workers.

The LAQ Case Management Standards have historically been posted on LAQ's intranet for its in-house lawyers and on the Grants Online website which is accessible by LAQ's preferred suppliers. The case management standards also form part of LAQ's contracts with our preferred suppliers. The case management standards are also now available on LAQ's public website at: http://www.legalaid.qld.gov.au/about/Policies-and-procedures/Pages/default.aspx

Professional development

Question – Information regarding the ICL/separate representative training offered and statistics on how many and who attends such training pre and post the 2004 CMC Report.

LAQ recognises the primary role of the Queensland Law Society and the Bar Association of Queensland in providing continuing professional development for lawyers. However, as a component of LAQ's Quality Legal Services Framework, we offer continuing professional development and training for our in-house lawyers and preferred suppliers in the areas of law in which we provide legal services.

To provide separate representation for a child under a grant of legal aid, a private lawyer must enter a contract with LAQ for that purpose – becoming a preferred supplier. To be eligible to act as a separate representative , the lawyer must meet certain criteria which include completion of the LAQ separate representative training course.

LAQ's separate representative training course is modelled on the training for Independent Children's Lawyers under the Family Law Act 1975 (Cth) conducted by the Family Law Section of the Law Council of Australia in partnership with National Legal Aid, and includes components about:

- the legislative requirements of separate representatives and how this role differs from representation of private clients in the family law jurisdiction;
- child protection practice and frameworks; and
- practical skills to assist separate representatives in conducting this type of litigation.

In providing separate representative training, LAQ has collaborated with:

- the Department of Communities, Child Safety and Disability Services to deliver sessions on the 'structure and role of the Department';
- staff from the Office of Child Protection Conferencing, Department of Justice and Attorney General on Court Ordered Conferencing;
- Social Workers; and
- Magistrates and members of QCAT.

Question – Information on what training is offered to LAQ preferred suppliers who provide legal representation to parents in child protection proceedings.

In addition to the separate representative training course, as changes to child protection law occur, LAQ provides relevant training to in-house lawyers and preferred suppliers.

The Queensland Law Society Children's Law Committee also offers regular continuing professional development focused on child protection. Further, the Child Protection Practitioners Association of Queensland (CPPAQ) and the Family Law Practitioners Association offer continuing professional development in the area of child protection.

Question – Information on how LAQ monitors the quality of service delivery, especially of preferred suppliers and in the regions for child protection matters.

See attachment 3.

Policy/law reform

Question – What are LAQ's views on current effectiveness and options for future reform in relation to:

1. *Relevant legislation and Rules*

See Part 2 – Court and tribunal processes on pages 11-18.

2. *The monitoring, investigation, oversight and complaint mechanisms for the child protection system and identification of ways to improve oversight of and public confidence in the child protection system.*

It is noted that the Commission for Children and Young People and Child Guardian (CCYPCG) already has a significant role in relation to the oversight and monitoring of the child protection system, including the investigation of complaints, under the *Commission for Children and Young People and Child Guardian Act 2000*, and that the Act also gives it responsibility for the community visitor program. LAQ supports the continuation of those roles.

Question – What are LAQ's views on:

- *The current child protection court and tribunal processes? What suggestions for reform does LAQ have? Suggestions for reform from other jurisdictions in terms of case management and practice directions would be appreciated. Observations or case studies that outline LAQ lawyers' experiences in representing parents and children and young people in child protection proceedings would be very helpful to explore relevant concerns.*

See pages 11-18.

- *Does LAQ have a view about the appropriate jurisdiction to consider child protection applications and issues of placement/contact? This should include consideration of how and when the Childrens Court and QCAT jurisdictions should interplay.*

See page 15.

- *The effectiveness of the current FGM process? What suggestion do you have for reform (including from other jurisdictions)? Does LAQ have a view about FGMs that occur in the context of child protection litigation.*

See page 15-16.

- *The effectiveness of the current court ordered conference process? What suggestions does LAQ have for reform (including from other jurisdictions)? Does LAQ have a view about when court ordered conferences should occur in the litigation process and what the purpose of these should be?*

See page 16-18.

- *The effectiveness of information sharing and disclosure processes in child protection litigation? What suggestions does LAQ have for reform (including from other jurisdictions)?*

We have already discussed our proposal for a comprehensive disclosure regime in child protection litigation at pages 11-13. However, we want to make some comment about the operation of the current information sharing and disclosure processes in child protection litigation.

See case study 2 in attachment 7.

It is acknowledged that there are some circumstances where information held by the Department should not be disclosed to a party to a proceeding, in particular because of significant safety concerns for a person, the necessity to maintain confidentiality of sources of information or to maintain confidential therapeutic counselling information and relationships.

In the absence of any Childrens Court Rules providing for disclosure, there is no acknowledgement by the Department that it is subject to a general duty of disclosure. It is LAQ's submission that a comprehensive disclosure regime should be developed under the Childrens Court Rules as part of a court case management process. The disclosure regime should be designed to be as simple as possible and provide for maximum disclosure of information to parties to child protection litigation, as would be expected of the State as a model litigant, and this should not utilise subpoenas nor should it be dependent on a request made pursuant to s190 of the Act. Rather, it should rely on an implied undertaking that binds the parties to the litigation and to the court.

Currently, parties (parents and subject children) to child protection litigation have to resort to applying for the court to issue subpoenas as a mechanism to obtain documents or information (disclosure) held by the Department that are relevant to the determination of the proceedings. This in turn seems to be interpreted by the Department to be a request pursuant to section 190 of the Act entitled "Production of department's records", and not simply a subpoena issued pursuant to the *Childrens Court Act 1992*.

Section 190 is contained in Chapter 6 of the Act entitled "Enforcement and legal proceedings". The chapter is concerned with offences under the Act and the enforcement of the law and the

prosecution of those offences. Section 190 is under Part 6 of that Chapter entitled "Confidentiality". The confidentially part provides for the protection of information obtained by the department in the administration of the Act and the limited disclosure of information to other government agencies involved in child protection and to the police for appropriate purposes as well as for research purposes. Section 190 deals with the provision by the Department of information in response to a subpoena. It seems clear that this section of the Act is not intended to provide a disclosure regime for child protection litigation, but to provide a process by which third parties involved in other legal proceedings, e.g. family law proceedings or defendants in a criminal prosecution, can seek access to information held by the Department that may be relevant to those other proceedings.

However, as pointed out above, in the absence of Childrens Court Rules providing for disclosure, the Department of Communities, Child Safety and Disability Services has relied on this provision to respond to all requests for disclosure of information in child protection litigation.

As these provisions were never intended for use by parties to child protection litigation, they are wholly unsuitable and ineffective, in terms of ensuring the Department makes appropriate and full disclosure of relevant information and evidence in child protection proceedings. In particular, there is no general duty imposed on the department to disclose all relevant documents to the parties to the proceedings as is the usual requirement for a disclosure regime for litigation such as that provided for in the Queensland criminal jurisdiction (Criminal Practice Rules 1999), proceedings pursuant to the *Family Law Act 1975* and the consequential *Family Law Rules 2004* (Cth), and any civil proceedings in Queensland under the Uniform Civil Procedure Rules. On the contrary, the department routinely relies on the four grounds in section 191(1)(a) to (d) for refusing to disclose information to other parties in child protection proceedings. These matters are not considered to be grounds for refusing to disclose information in ordinary disclosure regimes. However, it is conceded that there should be a basis for the Department, in certain circumstances, to refuse to disclose specific information with notice and for the parties to be able to seek access to that information by application to either the Childrens Court or QCAT.

A disclosure regime based on the disclosure regimes noted above could be adopted for child protection in Queensland. As these regimes are currently operating, they could be used with a level of confidence and certainty about their effectiveness and their interpretation.

The establishment of an effective court case management system and disclosure regime would have no cost impacts for agencies but it has the potential to significantly improve the efficient and effective conduct of child protection litigation which should deliver efficiencies and savings for all parties to the litigation and the courts. Importantly, it would ensure that decision-making in child protection litigation is well informed and tailored to the individual needs of the particular child/children in the case.

LAQ submits that the Act should be amended to clarify that sections 190 and 191 are primarily relevant to disclosure of information in non-child protection litigation. Further, as recommended earlier in this submission, Childrens Court Rules should be developed to establish a court case management process for child protection litigation, which should include a comprehensive disclosure regime. That regime could also make provision for the Department to refuse to disclose certain material in appropriate circumstances, with the Childrens Court or QCAT determining any application to disclose in response to the refusal.

Question – The effectiveness of how children and young people are supported to participate and how they are legally represented during court/tribunal proceedings? What suggestion do LAQ have for reform (including from other jurisdictions)? Please include details of LAQ's involvement in the Brisbane Childrens Court Participation Project.

LAQ supports the participation of children and young people in court and tribunal processes that affect them. The Act allows for both separate representation and direct representation of children and young people. Each model can support participation, as appropriate, for each individual child and young person.

LAQ supports the effective participation and representation of children and young people through training that it provides for practitioners about good practice in the conduct of matters as separate representatives, and in other child protection-related training. Good practice by child protection lawyers is further supported by the case management standards that lawyers are required to adhere to as separate or direct representatives when funded by LAQ.

LAQ continues to develop this work and support, including through the 'Brisbane Childrens Court Participation Project' – see below.

The "Brisbane Childrens Court Participation Project - Improving participation for children and young people" arose from a presentation by young people supported by the CREATE Foundation delivered at LAQ Separate Representative Training in April 2011 In the presentation called "Children and Young People in Care", the young people spoke about their experiences of the child protection system. Key stakeholders in the child protection system, including then Brisbane Childrens Court Magistrate Dowse, were in attendance. In response to the presentation, Magistrate Dowse invited representatives of CREATE Foundation, the Department of Communities, Child Safety and Disability Services and Legal Aid Queensland to join with the Brisbane Children's Court to develop a pilot project aimed at raising awareness of, and compliance with, the statutory obligations placed on the Department and the Court to facilitate the participation of children and young people in child protection proceedings. The pilot project is being trialled in Brisbane for 12 months commencing 1 January 2012.

To date, the project has resulted in the development of a checklist for completion by departmental officers for decisions made about court assessment orders and child protection orders and factsheets for use by lawyers when talking to children and young people about the child protection legal process. The factsheets developed in support of the project so far are:

- Child protection and the Childrens Court
- Having your say in the Childrens Court for young people in care
- What to expect when you go to the Childrens Court
- What are you rights while in care?

These resources can be located on LAQ's website at:
http://www.legalaid.qld.gov.au/publications/Factsheets-and-guides/Factsheets/Pages/default.aspx

Under the project, magistrates review the court files to ensure the completed checklist is annexed as an exhibit to an affidavit of a departmental officer in support of the application and that the child or young person's views and wishes are set out in the affidavit.

The next steps in the project involve the development of new LAQ fact sheets about the roles of separate representatives, direct representatives, social assessment reports and court ordered conferences.

- *The effectiveness of the current adoption process. What suggestions does LAQ have for reform (including from other jurisdictions)?*

Officers of the LAQ Children and Young People Team are aware of LAQ having been involved in only one adoption matter, as a separate representative, since the legislative changes. Accordingly, we are not able to comment on the effectiveness of the current adoption process. We assume on the basis of this experience that there have been very few adoptions under the Act. If that is not the case we would be concerned about the possibility that children, young people and parents in these matters are not receiving legal representation.

Department as litigant

Question – Does LAQ have a view regarding the most appropriate departmental officer to take on the role of Applicant for applications for child protection orders?

See comments in response to the next question.

Question – Does LAQ have a view about the various roles undertaken by the Child Safety Officer?

It is LAQ's submission that the applicant in child protection matters should be (and should remain throughout the proceedings) the child safety officer who conducted the initial investigation and assessment in the matter.

Child safety officers have three distinct roles: investigator; litigator; and case worker.

Usually, the child safety officer who has conducted the initial investigation and assessment files any resulting application for a child protection order and an initial affidavit. This officer then transfers the matter to another child safety officer. The second officer becomes the applicant and conducts the court application and also assumes the role of case worker with the family to attempt to address the issues that have brought the family to the attention of the Department. The second officer may also need to continue the investigation and assessment process while working with the family.

It is submitted that the multi-faceted role of investigator/assessor, prosecutor and therapeutic case worker is both difficult for the child safety officer to perform and counter-productive to achieving the best results for children and families. It is the experience of LAQ child protection lawyers that parents often do not engage successfully with child safety officers in their therapeutic role. This is because the same officer has either made an assessment that their child is in need of protection by way of statutory intervention, or because they are also required to investigate and assess any further concerns while case working the matter.

It is submitted that this situation could be ameliorated by the Department ensuring that a different officer to that conducting the investigation/assessment and prosecution, works with the family to address the issues that have led to Departmental intervention.

See case study 5 in attachment 7.

It is also LAQ's submission that child safety officers require appropriate and timely legal advice and support to perform their roles as investigator and litigator. As non-legally trained workers operating within a legal process to remove children at risk from their families, they require significant legal

support to most effectively and efficiently conduct child protection litigation. We have concerns about child safety officers understanding the evidentiary requirements of a court process and identifying and collating the necessary facts (evidence) to support the intervention in the family and any subsequent legal proceedings.

We refer the Commissioner to the New Model Conferences process in Victoria where child safety officers have access to the equivalent of Queensland's Crown Law Office at the Court Ordered Conference stage of the proceedings and the United Kingdom that provides legal advice and representation for departmental staff from the early stages of child protection interventions. We also note recommendation 59 of the Cummins Report, that provides Department of Human Services' lawyers should represent the Department at the pre-court conferencing stage.

Question – What is LAQ's experience of working with Court Coordinators, Court Services and Crown Law in terms of preparation of material and child protection proceedings in the Childrens Court and QCAT?

See LAQ's response to the following question.

Question – Does LAQ have a view about the quality of departmental applications and supporting affidavit material in child protection litigation including whether information sharing powers and the ability to issue subpoenas have been used effectively to illicit relevant and best evidence?

As stated in other parts of this submission, the quality of applications and supporting affidavit material would benefit from the receipt of proper legal advice and support at an early stage in the litigation process. This would also assist the early resolution of matters. The difficulty for child safety officers performing their multiple roles appears to be in identifying relevant sources of information, what information may be available from these sources, and in assessing the relevance of the information (evidence) gathered and filing the best evidence available. At the same time, they need to be mindful of the effect that the case could have on any related proceedings, such as a criminal prosecution.

The inadequacy of evidence in support of applications by the Department is a significant issue from LAQ's perspective because:

- Delays in/failure to identify and file best evidence compromises the ability to resolve litigation and may result in matters proceeding to hearing which would otherwise have resolved earlier. This has cost implications for LAQ which often funds multiple parties to proceedings, the Department and the court system.
- Lack of procedural fairness to respondents when best evidence is not available early for them to respond to leading to adjournments when evidence is provided just prior to hearing so that respondents can consider and respond to the evidence.
- When courts become aware that the best evidence is not before them they will often adjourn the matter and direct that the required information/evidence be prepared and filed before the case can proceed. (A court case management system would give the courts the opportunity to consider the issues and evidence prior to the hearing date and give directions to the parties.)

Often it is the separate representative in the case who identifies the evidentiary problems with the Department's case. The separate representative formulates options on how to progress the case and identifies the materials that should be put into evidence to support the application. These difficulties could be addressed in large part by providing child safety officers with early access to

legal advice to assist them during the investigation and assessment process and with the drafting of applications and affidavits.

See case study 8 in attachment 7.

LAQ acknowledges that the Court Coordinator position is essential for providing support to child safety officers in understanding and responding to the legal process. However, the position does not have any formal decision-making power, and at times is not effective when it is not supported by the leadership group (team leader, senior practitioner and manager) of the CSSC.

In our experience Court Services are mostly only engaged when a matter is listed for a final hearing, and then Crown Law may not receive a brief until just prior to the hearing. This has the result that the Department only receives legal advice in the matter very late in the litigation process.

The following consistent features and/or actions would improve the effectiveness of the court coordinator role:

- Locally based, either at CSSC or regional office;
- Role is focused on supporting CSOs in relation to Court proceedings, and where appropriate appearing on behalf the Department;
- Coordinator has access to early legal advice and where possible the legal advisor is briefed prior to the commencement of proceedings;
- Coordinator has access to peer support of other coordinators across region/state, and has support of Court Services in appropriate matters;
- Coordinator is a key part of the CSSC leadership team and has the support of the CSSC manager;
- Disagreements in relation to litigation between Court Coordinator and the applicant's team leader are resolved by the CSSC manager with reference to legal advice received.

Another issue that causes delays in child protection matters is the fact that the Department does not ensure staff with decision-making delegations are always in attendance at substantive court events such as COCs, contested mentions and final hearings, nor at FGMs convened to develop case plans. Dependent on the event, the Department might be represented by either the applicant child safety officer, a Court Coordinator or a lawyer. Often proposals are put to these Departmental representatives who will then have to make contact with the team leader back at the Departmental office to take instructions on how to proceed. This significantly delays negotiation of issues and the early resolution of matters. The Department should ensure that staff with decision-making delegations are in attendance at substantive litigation events.

Question – What is LAQ's experience of Child Safety Services involvement in criminal matters where young people in care (or with child protection histories) are seeking bail or are being dealt with for matters in the youth justice jurisdiction?

LAQ's Youth Legal Aid team most commonly sees young people in the care of the Department charged with offences of wilful damage and common assault. These offences usually take place in the residential care facilities and against care workers. They are often minor in nature and involve a child acting out as a result of behavioural issues. We understand that complaints for wilful damage offences are pursued by service providers for insurance reasons. Due to the nature of the offending and the difficulties it may create within their placement, these children are often arrested by police, charged and remanded in custody to appear before the court, rather than being given a notice to appear that would normally occur when young people are charged with these offences in other contexts.

We have had experiences with young people who have been charged with offences such as common assault against care workers or wilful damage in a residential care facility, who are returned to live in the same facility and be supervised by the complainants for their charges, even though the charges are contested and outstanding before the court. It is our submission that it is inappropriate to return children to the facility in those circumstances and that an alternative placement should be found for the child. We have experienced difficulties persuading Child Safety Services workers to find new placements for children in these circumstances.

See case study 9 in attachment 7.

We have had cases where no representative of Child Safety Services has attended at court for a young person remanded in custody. This creates obvious difficulties as the court requires detailed information about the young person's placement history and current placement options. In addition, we have experienced cases where Child Safety Services representatives have attended court but have little or no information about the young person's background. This usually occurs when the young person's case worker is not available to attend court and another representative from Child Safety Services attends in their place.

Where a young person is seeking bail, we have had the experience of Child Safety Services officers attending court without any placement options for the child and expecting that the young person will be remanded in custody until a placement may be secured. This can result in a young person with no or minimal criminal history being remanded in custody because no placement option can be suggested to the court. It is our submission that Child Safety Services has a statutory responsibility for children in its care that requires it to provide placement options to the court to ensure that children who would otherwise be released on bail are not remanded in custody because they have no placement option.

We recognise that many children in care present with challenging behaviours and can be difficult to manage. However, when a child is taken into care by the State, the State assumes a significant responsibility to protect that child from harm and make decisions in the child's best interests. When a child would otherwise be entitled to bail, a youth detention centre can never be considered an appropriate placement for that child.

LAQ notes the evidence and submissions received by the Commission regarding the use of an involuntary 'containment' or 'secure care' model for the placement of some young people in care. It is LAQ's view that a high degree of caution is required in considering such proposals, which would represent a significant addition to current legislative powers to deal with children and young people by detaining them. We have significant concerns about the impact of such proposals on the rights of vulnerable children and young people in care and the associated risk of further criminalising them. LAQ is able to make a further, more detailed submission about this issue if the Commissioner requests us to do so.

Question – Based on these practice observations does LAQ have any suggestions for reform (including from other jurisdictions)?

LAQ has outlined a number of proposals for reform of the child protection system in this submission.

Attachment 1

Legal Aid Queensland

Early Intervention and Advocacy in Child Protection Pilot

In partnership with community organisations to strengthen vulnerable parents and children

Summary of report

gwenn m u r r a y CONSULTING
November 2011

1 Scope, terms and methodology

The National Partnership Agreement (NPA) on Legal Assistance Services between the Commonwealth of Australia and the States and Territories has a commitment to finding better ways to help people resolve their legal problems. The Agreement seeks to address issues of social exclusion and Indigenous disadvantage and improve the effective targeting of services between service providers.

Legal Aid Queensland (LAQ) approved for a business case to be developed for child protection, early intervention and advocacy programs to address NPA objectives. The aim of the project was to scope a pilot program to operate for two years in a specified location. The principal focus of the project was to identify trends in presenting issues and gaps in legal assistance and advocacy for vulnerable children and families. The pilot is to be in line with LAQ's priority of early resolution of family law matters and through non litigious processes.

A needs analysis was undertaken through data collation, a broad consultation process and review of discourses. The project was also assisted by an Aboriginal consultant. The needs analysis identified areas of need in child protection such as gaps in legal services, particular areas of law and issues, the needs of particular client groups and locations that would benefit such a pilot. This identified the features, type and location needed for the pilot. Available data were limited due to inconsistency in its collection and recording by each government department and non-government organisation.

The project investigated possibilities of community based services hosting a pilot model with the intention of sharing resources and better targeting of services for vulnerable and isolated families at an early stage of the child protection continuum. This was consistent with the NPA.

2 Early intervention – why intervene early?

The project considered through discourse and consultation, what is 'early intervention' and when is it best to get involved with families to achieve the pilot's objectives and optimal outcomes for families and children? The NPA interprets early intervention services to mean legal services provided by legal aid commissions to assist people to resolve their legal problem before it escalates, such as legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance.

Current thinking about early intervention increasingly accepts the premise that early childhood experience crucially determines health and wellbeing and the attainment of competences at later ages of life and that investment in the early years will be reflected in improved education, employment and even national productivity[1].

Longitudinal studies show the strong relationship between stress pathways and behaviour, physical and mental health and child abuse and neglect. Prevention and early intervention strategies[2] should aim to influence children's, parents' or families' behaviours in order to

[1] Keating & Hertzman, 2000 cited in Homel R et el (2006) "The Pathways to Prevention Project: Doing developmental prevention in a disadvantaged community" in *Trends and Issues in Criminal Justice*. Institute of Criminology 323; and Dept of Communities Qld (2010) "Referral for Active Intervention Initiative three year evaluation report".

[2] Department of Communities New South Wales (2005) Prevention and Early Intervention Literature Review

reduce the risk or ameliorate the effect of less than optimal social and physical environments[3].

How early in a child's life should programs intervene? When is the best point in the life of families under stress should agencies get involved? If the aim of intervention is to keep the family out of the child protection system all together then there is a risk that families under stress will receive no services or support at all. Programs that seek to strengthen families and connect them with mainstream services have been shown to be the most effective in keeping children safe and reducing risk of abuse and involvement in crime and other violent behaviour.[4]

The Pathways to Prevention work that has been undertaken in this country since 2001 considers that intervention programs are 'early' in two senses; they aim to identify and address problems and stresses before the problems fully develop and they focus on the earliest stages of children's lives (pre and post natal period). They may be universal (available to all parents or sometimes all first time parents) or more specifically targeted towards particular social or demographic groups such as young single mothers, teenage mothers or parents experiencing stress and isolation.

3 Connecting with families

Parenting education and advice is a key component of Family Support Models and these programs also link in families to an array of formal supports and other local services[5] [6]. This largely describes the work of Services such as Referral for Active Intervention (RAI) and Micah Projects that currently work at a grass roots level with vulnerable families and children to connect them with specific services to address various needs such as mental health and domestic violence services and parenting programs. This is to strengthen the family and change the balance between risk and protective factors and build resilience. Legal services in collaboration with these services would indicate an opportunity to achieve the optimal outcomes for these families; the project has made this recommendation and options of Family Support Models that intervene early in one's life and early in the child protection continuum.

In providing early intervention legal assistance and advocacy, it is crucial for lawyers to be able to connect and engage with families; therein lays a challenge due to the many barriers that face vulnerable families and children.

There are families who are disenfranchised, homeless or at risk of homelessness, with mental illness and/or drug and alcohol problems. Most are living in poverty, many are

http://www.community.nsw.gov.au/docswr/_assets/main/documents/eip_literature_review.pdf

[3] National Crime Prevention (1999) Pathways to Prevention: Developmental and early intervention approaches to crime in Australia. Full Report

[4] Stevenson, J., & Goodman, R. (2001). Association between behaviour at age three years and adult criminality. *British Journal of Psychiatry, 179*(3), 197-202.

[5] National Crime Prevention (1999) Pathways to Prevention: Developmental and early intervention approaches to crime in Australia. Full Report. Homel R et el (2006). The Pathways to Prevention project: doing developmental prevention in a disadvantaged community. *Trends and Issues in Criminal Justice* Institute of Criminology 323 August 2006.

[6] Department of Communities (2010) "Referral for Active Intervention Initiative three year evaluation report".

socially or geographically isolated and estranged from their families or communities (including refugees, young pregnant or parenting women) who do not understand the role of Child Safety Services and the requirements of them by the Department. Many of these families would struggle to access services LAQ services.

Consultations with Magistrates, lawyers and family support services revealed how these families do not engage with legal services and often believe they are linked to Child Safety Services or Qld Police Service and therefore are untrusting of them.

Therefore there are good reasons for a LAQ pilot to work in collaboration with established family support services that are already engaged with vulnerable families and children and provide early intervention services for them.

Programs such as Pathways (Parenting Under Pressure), RAI and Micah build connectedness with families and engage them with agencies and can ameliorate some of the effects of poverty and isolation by working with parents, community leaders and institutions such as schools. These services are already providing positive outcomes where the LAQ pilot could value add.

4 Child protection gaps responses

LAQ policy and strategic plan places children and young people as a priority. It is the lead agency for the representation of children and young people. LAQ has had an increasing commitment to children and young people and the child protection system with the appointment of separate representatives and the ability to directly represent children and young people in the children's court and in QCAT.

Child protection summary statistics for Queensland 2004-05 to 2008-09 show the percentage of change in the various measures during this period. Of notice there has been a 22% increase in the number of child concern reports, a 27% decrease in the number of substantiations not in need of protection and a 29% increase in the number of children subject to ongoing intervention.

Referrals to a LAQ pilot could potentially be great if there is not specific targeting of client groups. There were over 100,000 intakes recorded by Child Safety Services for the year 2009-10 and nearly 22,000 of these were child protection notifications. In 2008-09 there were 3,321 admissions to assessment orders. Potentially any of these parents could require legal advice.

There has been an overall increase in total intakes recorded by the department over the past five years, excluding general enquiries. From 2005-06 to 2009-10 total intakes increased by 62%. In 2009-10 the major sources of intakes were from police followed by school personnel and then parents/guardians[7].

Data identified trends such as 89% increase in the number of children subject to Intervention with Parental Agreements (IPA) between 2008 and 2009; 33% of these concerned Indigenous children. All stakeholders acknowledged a lack of advice available for parents concerning IPAs. They said many parents did not understand what the IPA involved and signed agreement to it without understanding what was required of them or what this

[7] Department of Communities website.

would mean for their children. Families have reported receiving varying information from Child Safety Services, some times verbal, some times written and other times nothing at all[8].

Data and consultations identified gaps in services for vulnerable families and children who would not ordinarily be able to access LAQ or Aboriginal and Torres Strait Islander Legal Services. In particular there are gaps in services and a high level of socio-economic disadvantage in some rural areas such as the South Burnett region.

Agencies expressed concerns about Indigenous families; there was an increase in over 1,000 Indigenous children requiring intervention during the past three years. As the number of these children placed in out of home care rises (58% of children placed with kinship or carers are Indigenous children) they are statistically less likely to exit the system in the short term than non-Indigenous children.

Approximately 57%[9] of children subject to ongoing intervention by authorities in Queensland are Indigenous. The level of representation within the child protection system is grossly disproportionate when considering Aboriginal and Torres Strait Islander peoples:

- Comprise of a mere 3.27% of the State's population[10]; and
- More than half of all Indigenous Queenslanders are minors[11].

4.1 Pre and post birth legal assistance

The needs of young pregnant or parenting women were consistently raised during consultations. Children unborn to four years of age, is the group of children most at risk; this group made up 52% of all children who were the subjects of substantiated neglect and 43% of all children who were the subjects of substantiated physical abuse. Unborn child notification data has not been available until very recently and not for previous years.

Anecdotal information is that the number of removals of children from their mothers at birth has increased. Community support services expressed concern about children not returned to their mothers within the first 12 months of their life which presented significant attachment disorders for these children. These community support services are working to strengthen these vulnerable families to safely care for their children. Workers raised a range of legal advice and advocacy needs for this client group.

Similar concerns were expressed in Western Australia and Legal Aid Western Australia (LAWA) commenced a "Signs of Safety" pilot in November 2009 in response. Child protection matters in the metropolitan area of Perth are mediated through either a Signs of Safety lawyer-assisted pre-hearing conference (conducted by a Convener) or pre-birth

[8] Family Inclusion Network Brisbane (2011) "Working in Partnership with Parents" report on parent survey. 2010-11. Consultations with Marcia Sullivan LAQ Mt Isa and Bundaberg, QCAT, PeakCare and QATSICPP.
[9] Source: Department of Communities; Children subject to ongoing intervention, by ongoing intervention type and Indigenous status, Queensland, as at 30 June, 2008 to 2010.
[10] Source: ABS Statistics, 2006 census – which calculated the population of Queensland as 3,904,532 of which 127,578 identified as Indigenous.
[11] Ibid. [A total of 69,200 Indigenous people in Queensland were recorded by the 2006 Census as between the ages of 0-17]

meeting (conducted by a facilitator). The Signs of Safety pilot[12] is the first of its kind in Australia. There is significant research that supports the benefits of conference based decision making for the development of positive working relationships with families and other professionals and for the participation of children in child protection matters.

The Signs of Safety is a risk assessment framework process for analyzing the information gathered with the family and other professionals working with them including their lawyers. This involves describing what it is that their workers are worried about, what is working well for the family, their strengths and what needs to happen to minimize the risk of harm to the children. The resulting safety action plan is built from these straightforward statements and is described in terms that can be understood by everyone involved including the children[13].

The Signs of Safety pre-birth meetings have led to a comprehensive and innovative inter-agency process with a MOU developed between the partners; Department for Child Protection, King Edward Memorial Hospital and key stakeholders working with at risk babies and their families.

It is timely to consider implementing a LAQ pilot within a Family Support Model to assist young pregnant or parenting women and families.

4.2 Vulnerable and marginalised families

The Australian Institute of Health and Welfare 2009-10 found in the Brisbane region 97% of couples presenting with children for new or urgent accommodation were turned away from housing and homeless services. Parent support agencies reported growing numbers of orders and removal of children due to neglect from being homeless. Consultation indicated that homelessness is a reason for recording notifications against families for neglecting their children and highlights the cross over in jurisdictions when homelessness issues become child protection concerns[14].

Between July 2010 and June 2011, Micah Projects worked with a total of 793 families and 1148 children. Of these families 33% identified as Indigenous Australians. Of the 1148 children 61 were infants under 1 year old and 438 were children under 4 years old. Many of this group were homeless or at risk of becoming homeless and had come to the attention of Child Safety Services.

Micah works with the Brisbane Homelessness Service Centre which is located in inner-city Brisbane, a range of services are available for individuals and families including information, support, advocacy, health, recreational, and employment services. The partnership was formed in 2005 and operates as a co-location model with several agencies located in the one building. Micah Projects is the lead agency.

[12] Jackson, J, Willcox J, Allen I, Lewington, M (2010) "Breaking through the Barriers: The role of Lawyer Assisted Mediation in child protection". Legal Aid WA.
[13] Ibid.
[14] See QCAT decision ***Dept Communities, Housing and Homelessness Services v Kairouz (2010)QCAT 355A.***

5 Targeting services for early intervention in partnership with community organisations

The challenge in developing an appropriate early intervention model is to be realistic about what the service can and can't provide given the limited resources and that it is a pilot with no certainty for its continuance at this stage.

The pilot can't be all things to all people, it shouldn't duplicate what is already available and it can't be so broad that it is inundated with unrealistic expectations and referrals. The project therefore enquired – *what are the current concerns and gaps in child protection services? What's currently working or looks promising where LAQ could collaborate and have some impact where community organisations are currently engaging with vulnerable families?* This is to ensure an investment with the best return and optimal outcomes for vulnerable families and children and in acknowledgement that collaborative practice with agencies that are already engaging with vulnerable families is the most effective practice[15].

Essentially the pilot would be a family and children advocacy legal service that would target families early in the child protection continuum, early in the life of children and to partner with support services that currently engage with the families and work with them to achieve better outcomes for their children. This would keep children safe, prevent progression onto the next transition point of the child protection continuum and reduce the need for further statutory intervention and future court proceedings.

The project considered a number of programs and services already operating within the State that could partner with LAQ and would provide a referral pathway to the pilot.

There are two organisations in particular who would 'fit' within the aims and philosophy of the pilot and could form such a partnership with LAQ and also expressed a strong interest in a partnership and in hosting the pilot; the Referral for Active Intervention (RAI Services) and Micah Projects.

RAI services are funded by the Department of Communities in 10 locations across the State to work with at risk families. But once Child Safety Services formally become involved with families possibly through the outcome of an Investigation and Assessment, through Care Assessment Agreements or Intervention with Parental Agreements for example, families' eligibility for the RAI program ceases. Families therefore would have difficulties accessing the LAQ pilot[16].

The project has recommended a partnership arrangement between LAQ and the Micah Projects and that the pilot is based within the Micah offices. However an outreach service within the Micah offices would also be viable.

The pilot should be staffed by two lawyers and one family support coordinator, the role of the co-ordinator is vital as this position would work in collaboration with Micah in developing referral pathways and MOUs and recording data. An evaluation framework has also been recommended by the project.

[15] Department of Communities (2010) "Referral for Active Intervention Initiative three year evaluation report".
[16] Discussions with two RAI services and the departmental staff indicated an interest from the Services to partner with LAQ.

The family support model and coordinator are important links in providing family support as well as legal services. Initially the pilot would focus on providing legal assistance and advocacy for –

1. Young pregnant or parenting women and families requiring support services through Micah, Young Parents Program, Mater Mothers and Royal Brisbane and Women's Hospitals; and

2. Vulnerable families who access support through Micah and its partner agencies, who are challenged by many barriers preventing them from accessing legal services.

Micah currently works with both of these targeted client groups. The Young Parents Program also works with the first group through the Royal Brisbane and Women's Hospital and an outreach service could also be provided through the pilot to the Young Parents Program as well. Micah and YPP have strong links.

Through Micah and YPP, LAQ would form partnership arrangements with the Mater Mothers and Royal Brisbane and Women's hospitals.

Micah projects has a Strategic Partner Group that includes agencies such as Mater Mothers, Royal Brisbane and Women's Hospital, One Chance at Childhood Dept of Communities (Intake at Alderley and co-ordinated for Brisbane referral), Brisbane Youth Service, Young Parents Program and some other organisations such as Salvation Army, domestic violence services and Aboriginal health services. This group meets monthly and would be a referral pathway and able to feedback on the progress of referrals, the model design and outcomes.

The features of the proposed model are consistent with the family law priorities of LAQ and the *National Partnership Agreement on Legal Assistance Services*, which recognises the need for a holistic approach in the delivery of legal assistance services especially to disadvantaged Australians.

6 South Burnett Model and extension programs

According to the *Socio-Economic Index of Disadvantage*, 61% of the South Burnett's population of 31,000 falls within the most disadvantaged quintile.[17] This highlights the low-income levels, relatively lower education attainment and high unemployment in the region. Situated within the district is the Aboriginal community of Cherbourg, which has an estimated population of 1,200 people that fluctuates up to an unofficial figure of 1,500 (in light of the high mobility of Indigenous family groups). The needs of vulnerable families in this region were highlighted in the project report as a rural community in need of early intervention legal assistance.

The project report also recommended the establishment of a Family Support Model to operate in the South Burnett region to provide legal assistance and representation to families during child protection proceedings. Like the Brisbane model a Family Support Coordinator would facilitate community-based support for families relevant to their legal representation to eliminate risk factors. The proposed pilot would be co-located in a regional courthouse to service child protection lists in the Kingaroy, Nanango, Murgon and Cherbourg Magistrates Courts on a weekly/monthly circuit. It would provide legal assistance and advocacy for potentially all vulnerable South Burnett families involved in child protection

[17] *Queensland Regional Profiles: South Burnett Regional Council*; Office of Economic & Statistical Research; Queensland Government; 2009

proceedings can utilise the LAQ pilot and formalise coordination of community programs and services, tailored to client's needs.

At this stage LAQ has decided to commence the pilot in the Brisbane region and will consider the feasibility of establishing a similar service in the Kingaroy South Burnett area after evaluation of the Brisbane model. A maximum of three positions is available to staff the pilot at this time. Both models are important and two locations would be beneficial in evaluation and in understanding city and rural needs. However resources cannot stretch to two locations at this stage.

The project also considered a range of data and conducted a comprehensive consultation with stakeholders who generously gave their views and information about a wide range of programs and needs of their client groups. It is clear there are many needs across the State and there are worthwhile programs that look very promising which LAQ could consider being involved in at a later stage. There are also areas that require improved practice and would benefit through LAQ involvement, particularly greater advocacy for children and young people.

7 Proposed model for the LAQ Pilot – Early Intervention and Advocacy Family Support Model

Model	Early Intervention and Advocacy Family Support Model (Brisbane)
Partners	Micah Projects with its strategic partnership group & Mater Mothers Hospital, Royal Brisbane and Women's Hospital, Young Parents Program with MOU between partners.
Description	Pilot service would assist vulnerable families who are clients of Micah and its partner services. It would target – 1. at risk families at pre-birth and birth and 2. Micah clients in general who are disenfranchised and primarily homeless or at risk of homelessness. Legal advice, minor assistance and advocacy & training for support workers about related child protection matters ie unborn child notifications, IPAs, requirements on families of DoCs, tenancy, DV orders and impact on children and advocacy for subject children and young people.
Intervention stage	1. Intervention early in child's life to prevent/minimize contact with child protection system, and 2. Intervention early in child protection continuum to prevent progression onto the next transition point.
Staffing	1st preference 2 lawyers and 1 Family Support Coordinator (FSC). Lawyers provide legal advice, minor assistance and advocacy. FSC works with partner agencies for referral, develop the model, develop education program for service workers and record data
Location	Brisbane region defined by DoCs and Micah. 1st location preference - Micah Projects (West End, South Brisbane or Annerley) providing outreach at Mater Hospital & Young Parents Program (assisting young parents at Royal Women's Hospital) 2nd location preference - LAQ Herschel St and provide outreach at Micah Family Hubs, Mater Hospital and Young Parents Program (Royal Bris Women's Hospital).
Benefits/ Disadvantages	*Benefits* – ▪ No service currently like this ▪ It meets criteria of National Partnership Agreement & LAQ family law priorities ▪ Clear about defined target groups so as to have impact, not set up to be 'all things to all people' and safe guard against inundation and burn out ▪ In response to gaps evidenced in data and literature – 'start early and start at the hospital' (Pathways to Prevention) ▪ targets families and children early (pre-birth, at birth or early in child protection continuum ▪ Referral pathway already exists with wide number of services ▪ Micah has partner services to support families to better keep children safe, reduce requirement for State intervention and further court proceedings *Disadvantages* – ▪ Care will need to be taken ensure there is no conflict if LAQ staff hold views or provide advice to clients that is different to Micah – MOU should assist ▪ Some effort will need to be made to consult with staff from the Mater Hospital to set up the pilot however, Micah staff have an established relationship with the Mater as do YPP with the Royal Bris Hospital and could assist greatly in this regard – MOU should assist.
Operational implementation	Implementation ease. Micah is a well established service with good working relationship with Mater Hospital and services. It has systems in place that pilot could tap into. Thus a saving in infrastructure costs and establishment time in developing referral network which LAQ could work within. It is timely to establish the pilot as Dept Communities is currently looking at ways to improve practice concerning unborn children and babies. Micah is a proven partner with service agencies and works with the most vulnerable families. Micah is supportive of the LAQ pilot and has office space at three possible locations. The framework model is based on elements of "Signs of Safety" model in WA where LAWA is partner with hospital, Dept for Child Protection, Family Inclusion Network (part of Micah Qld) and service agencies and evaluated. There is potential to future develop the LAQ Pilot into similar service to WA service with Qld partners including DoC, QCAT, QHealth and NGO services.

Attachment 2 – Statistics on Grants of Legal Aid for all Stages of Child Protection Legal Process

1. Legal Advice

Legal Aid Queensland (LAQ) provides legal advice and minor assistance. This service is not subject to a means or merits test. Legal advice is provided in a face to face interview or by telephone. Sessions are generally approximately 30 minutes in length however may extend to up to an hour. A single client may attend on more than one advice session in relation to the same proceedings. Minor assistance in the form of phone calls or drafting correspondence may also be provided for up to 2 hours. More than one matter type may be addressed during an advice session.

Legal advice is categorised by broad "matter type" and does not go to the detail of the actual issue(s) addressed such as Intervention with Parental Agreements and Care Agreements.

Table 1. Legal Advice Statistics

Legal Advice	
Financial Year	**Total**
1999-00	412
2000-01	474
2001-02	593
2002-03	782
2003-04	1,172
2004-05	1,434
2005-06	1,425
2006-07	1,200
2007-08	1,204
2008-09	1,213
2009-10	1,055
2010-11	1,072
2011-12	1,339

Following reforms in 2004 the number of legal advices provided for child protection matters increased from an average of 565 per year in the years to 2004 to an average of 1,235 per year in the years from 2004. This reflects an average increase of 118% between the two time periods.

2. Demand for Legal Representation

Applicants apply for legal assistance by submitting an application for legal assistance. Applications received data from 1999-00 is set out in Table 2 below.

Table 2. Applications Received Statistics

Financial Year	Category			Total
	Parties	Direct Child	Sep Rep	
1999-00	280			280
2000-01	446			446
2001-02	645			645
2002-03	809		1	810
2003-04	1,172		1	1,173
2004-05	1,523	1	17	1,541
2005-06	1,574	1	49	1,624
2006-07	1,762	1	151	1,914
2007-08	1,709	9	495	2,213
2008-09	1,625	14	611	2,250
2009-10	1,433	18	463	1,914
2010-11	1,232	27	350	1,609
2011-12	1,342	58	465	1,865

Applications for legal assistance are tested for means, guidelines and merits as set out in the LAQ Policy Manual. Applications approved data from 1999-00 is set out in Table 3 below, including approval rates.

Table 3. Applications Approved Statistics

Financial Year	Category			Total Approvals	Approval Rate
	Parties	Direct Child	Sep Rep		
1999-00	232			232	83%
2000-01	376			376	84%
2001-02	550			550	85%
2002-03	692		1	693	86%
2003-04	1,007		1	1,008	86%
2004-05	1,358	1	17	1,376	89%
2005-06	1,392	1	49	1,442	89%
2006-07	1,622	1	151	1,774	93%
2007-08	1,520	9	495	2,024	91%
2008-09	1,464	14	610	2,088	93%
2009-10	1,249	14	462	1,725	90%
2010-11	1,043	24	349	1,416	88%
2011-2012	1,188	50	465	1,703	91%

Following reforms in 2004 the number of legal representation services provided for child protection matters increased from an average of 463 per year in the years to 2004 to an average of 1,617 per year in the years from 2004. This reflects an average increase of 250% between the two time periods.

In the period 2006-07 to 2008-09 a Family Group Meeting (FGM) funding pilot was undertaken by LAQ. This pilot provided funding for a lawyer to attend at FGMs at various stages of the proceedings. Provision was also made for attendance at FGMs prior to proceedings being issued. This accounts for the increased approvals during this period. Amendments to legal aid policy in 2009-10 to provide legal assistance for representation only once proceedings had been issued resulted in a reduction in approval numbers from 2009-10.

3. Approvals for Key Litigation Events

Legal aid is granted in stages. Table 4 below details the approvals for key stages of child protection proceedings in the Children's Court and subsequently on appeal to the Childrens Court of Queensland or on review to QCAT.

Table 4. Approvals by Key Litigation Stages

Stage	Financial Years												
	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Initial advice	223	315	410	580	748	924	932	1,012	1,194	1,248	1,261	1,101	1,241
Initial advice - Sep Rep	34	125	282	255	403	658	627	765	1,006	1,157	560	354	471
Court Assess Order	94	128	117	165	304	468	468	488	470	426	163	81	76
Family Group Meeting							476	997	1,319	1,516	1,243	1,009	1,131
Inspection of Departmental files by sep rep											235	218	278
Court Ordered Conference	68	130	199	257	439	682	609	772	1,043	1,152	987	763	838
Mention – additional to mentions included in initial grant of aid											841	757	956
Hearing	17	38	68	158	159	232	204	251	351	369	328	203	246
Additional hearing days	7	24	39	83	67	101	119	161	230	260	298	242	332
Hearing - counsel		9	12	38	27	53	54	48	86	132	93	58	76
Additional hearing days – counsel		6	13	27	19	30	39	43	90	117	85	38	73

Complexity – includes solicitor or barrister reading fee		1	4		2	10	11	41	103	163	65	72	80
Appeal		1	6	22	30	25	29	37	39	40	38	10	14
Appeal – additional hearing days		1				4	4	6	2	9	10	1	
Outlays – includes expert reports and travel expenses	20	109	222	583	873	1,209	1,140	1,520	2,105	2,733	2,228	1,882	2,103
Post Order - further work required after final orders							29	105	111	81	74	73	98

4. Social Assessment Reports

LAQ provides grants of legal assistance, generally to separate representatives, to obtain initial social assessment reports, other specialist reports, testing of parties and updated reports as proceedings continue. These may be sourced from social workers, psychologists, medical specialists such as psychiatrists, paediatricians etc. LAQ also funds the attendance of report writers as expert witnesses at hearing if required.

A separate representative will inspect all available material and consider if a social assessment report or other expert report is necessary. If it is considered to be necessary they will either contact the Department and request it to obtain the report, or, if it is their opinion that an independent report is necessary and should be obtained by the separate representative, apply for a grant of aid for a report to be commissioned.

Where there are existing reports available on the Department's file, the separate representative will assess if these reports are sufficient to assist the Court in its determination of the matter and whether the matter would be significantly prejudiced without a further report being obtained. The separate representative will assess how this evidence will assist the Court in its determination of the issues outstanding before the Court; and the orders that will best promote the best interests of the child.

Details of grants of legal assistance for reports is set out in Table 5 below.

Table 5. Social Assessment & Other Report Statistics

Financial Year	Initial Report	Update Report	Testing	Other	Court Time	Cancellation	Total
2002-03	1				1		2
2003-04	1						1
2004-05	15	2			1		18
2005-06	55	7	1		17		80

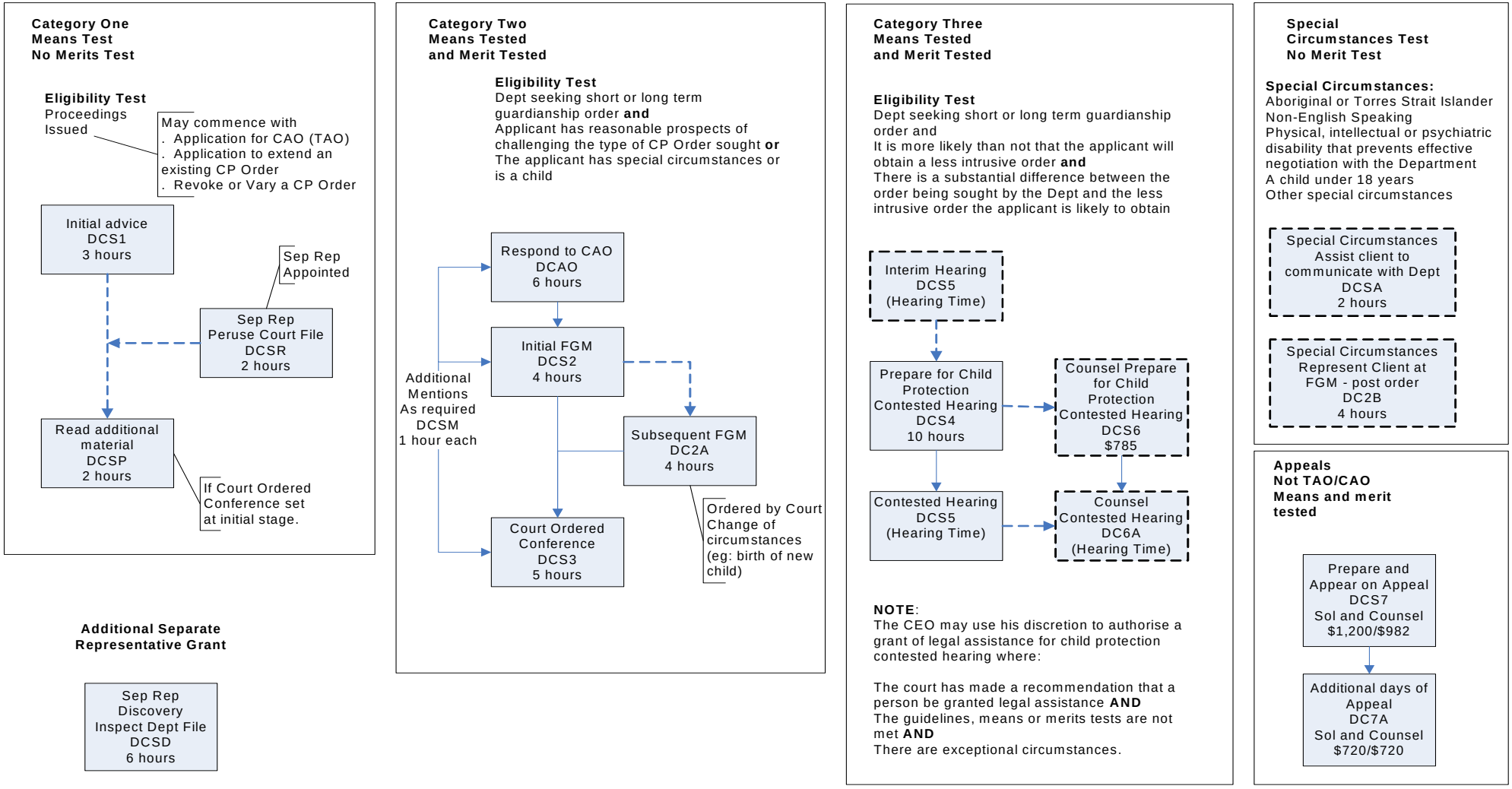
Financial Year	Initial Report	Update Report	Testing	Other	Court Time	Cancellation	Total
2006-07	137	23	3		26		189
2007-08	396	78	11	1	64	4	554
2008-09	561	81	20	2	112	6	782
2009-10	393	61	16	2	108	6	586
2010-11	325	36	10		65	1	437
2011-12	388	32	8	2	89	6	525

Figure 1 sets out a summary of the key stages, eligibility tests and legal aid response.

Figure 1: Summary of Key Stages

Parties
Direct Child Representation
Separate Representative

Legal Aid Queensland Child Protection Grants of Legal Assistance Response



Complexity – additional hours @ $120 per hour – assessed on case by case basis (KCO)

Attachment 3 – Case Management Standards and compliance processes

Practitioners eligible to undertake Child Protection work

Legal representation may be provided by LAQ's in-house legal practice or private law practices. These law practices must have been included on the relevant LAQ list or panel and also entered into an agreement with LAQ to provide legal services.

To be eligible for inclusion on a list, such as Child Protection, the law practice is required to demonstrate it meets the eligibility criteria, including that a principal, partner or director of the practice can demonstrate a satisfactory level of experience and competence in the area of law and that they are familiar with and have systems and procedures in place, that will ensure compliance with LAQ's Practice Management Standards and the Case Management Standards relevant to the list/s that they are applying for. Such practices are known as Preferred Suppliers.

Appointments as Separate Representatives and Independent Children's Lawyers (ICLs) are made to individual practitioners not law practices. To be appointed as a Separate Representative by LAQ, an individual practitioner (whether employed by LAQ's in-house legal practice or private legal practice) must have applied for and been granted inclusion on LAQ's ICL and Separate Representative Panel. Applicants again need to demonstrate experience and competence in the area of law, have attended the national ICL and LAQ's Separate Representative training, nominate 3 referees and be familiar with the Practice and relevant Case Management Standards. Applicants are interviewed by a Selection and Review Committee which is comprised of 3 highly experienced ICLs /Separate Representatives or expert report writer who works in family law/child protection. The committee makes recommendations about applicants' suitability for inclusion. If their application is successful, practitioners in private law practices are also required to enter an agreement with LAQ to provide legal services as an ICL and Separate Representative.

The Preferred Supplier List commenced in 1998 and the ICL and Separate Representative Panel moved to a formal agreement model in 2004.

The rationale for establishing the Preferred Supplier List and the ICL and Separate Representative Panel was to:

1. ensure LAQ has certainty about the delivery of services throughout Queensland
2. ensure that LAQ referrals go to law practices on the Preferred Supplier List and, in the case of ICL and Separate Representative appointments, to practitioners on the ICL and Separate Representative Panel
3. maximise the quality and cost effectiveness of legal services delivered to the people of Queensland
4. ensure the Preferred Supplier or ICL or Separate Representative adopts service delivery standards in accordance with LAQ's Practice and Case Management Standards
5. ensure proper accountability for the expenditure of funds provided by LAQ
6. allow the Preferred Supplier, ICL and Separate Representative access to LAQ's resources.

The agreements entered into by Preferred Suppliers and LAQ or by ICLs and Separate Representatives and LAQ, impose a number of conditions on Preferred Suppliers, ICLs, Separate Representatives, including:

- compliance with LAQ's Practice and Case Management Standards
- compliance with LAQ's payment policies, and
- supply of legal aid files for audit by the Audit Team of LAQ.

As employees, legal practitioners in LAQ's in-house practice are required to comply with LAQ's policies processes and procedures, including LAQ's Practice and Case Management Standards. In addition, LAQ's in-house legal practitioners are subject to LAQ's Legal Profession Supervision Plan. A copy of the Legal Profession Supervision Plan – Family Law, Civil Justice and Advice Services is attachment 4.

Under this plan, legal practitioners new to LAQ are given induction training addressing:

- legal professional and ethical obligations
- LAQ's practice and case management standards
- relevant legislation – knowledge and application
- case law – research and learning
- practical skills – e.g. client communication skills, interpersonal skills
- administrative requirements – e.g. LAQ Office, Grants Online, Visualfiles.

As specified in the plan, the principal lawyers and senior lawyers review the professional work of all family, civil and advice lawyers within their team or group on a regular basis in accordance with the staff member's personal work and development plan.

Regular reports on the results of audit and file review processes are provided to the CEO and the deputy CEO, together with proposals to address any issues that require remedial action identified in the audit and file review processes.

The results of the relevant file audit and legal advice audit processes are also used to inform the planning and delivery of training, and regular case and work based discussions, to improve the legal skills and knowledge of staff.

Case Management Standards

LAQ's Practice and Case Management Standards outline the work necessary to be undertaken to adequately represent a client and both private practitioners on the Preferred Supplier List and the ICL and Separate Representative Panel and practitioners in LAQ's in-house legal practice are required to comply with the standards in their legal practice. All practitioner are audited according to these standards to ensure the highest quality legal service delivery and, also to identify training needs for practitioners in LAQ's in-house practice.

The Case Management Standards relevant to child protection matters are contained in both the Civil Law Case Management Standards and the Family Law Case Management Standards. A copy of the Case Management Standards relevant to child protection matters is attachment 4.

The Practice and Case Management Standards are publicly available on LAQ's website, www.legalaid.qld.gov.au.

When a private practitioner makes enquiries for inclusion on LAQ's Preferred Supplier List or the ICL and Separate Representative List, the practitioner is sent a application kit that includes a copy of the Practice and relevant Case Management Standards.

Audit Program

LAQ's audit program uses a multi-risk based approach to ensure appropriate use of audit resources.

Practices and practitioners are given a risk assessment rating based on a number of factor including:

- the amount of payments received in the last financial year
- the number of referrals received in the last financial year
- whether the law practice is a new inclusion to the Preferred Supplier List or the practitioner is a new inclusion to the ICL and Separate Representative Panel
- whether the practice or practitioner has previously been issued with a notice to show cause why they should not be removed from the list, or a notice to remedy breach
- whether there have been previous warnings that a 'show cause notice' or 'notice to remedy breach' may be issued
- whether there has been a considerable increase in payments since the previous financial year
- whether there has been a considerable increase in referrals since the previous financial year
- whether there have been any validated complaints against the law practice or practitioner, and
- date and outcome of prior audit/s

The factors are not weighted equally in determining overall risk. The dollar value and number of previous referrals are given greater weight and usually preferred suppliers with annual payments greater than $350,000 are deemed high risk and audited annually.

ICLs and Separate Representatives are usually deemed lesser risk due to the requirement for ICL and Separate Representative training and the more stringent application process.

At the commencement of each financial year, the Audit Program Manager runs reports for each preferred supplier, ICL and Separate Representative and then selects which preferred suppliers, ICLs and Separate Representatives will be audited. Regular reports are run throughout the year.

Preferred suppliers, ICLs and Separate Representatives are usually audited at least once every 3 years and many preferred suppliers will be audited more often than that.

For the purposes of the audit, the practice or practitioner is required to provide between 2-7 files for each area of law. Usually LAQ randomly selects the files required for audit. If problems are identified during the audit, the Audit Team may request that further files be supplied.

The files are audited for:

- claims for payments
- compliance with the Practice and Case Management Standards
- compliance with the terms and conditions of the Agreement with LAQ

- compliance with LAQ's grants policies.

An audit report is prepared by the Audit Officer setting out any non-compliance. A copy of the report is sent to the practice or practitioner with a request for their response. Any serious non-compliance may result in further contract management action, for example, the issue of a notice of remedy or termination.

Separate representative meeting with child

The Case Management Standards for party representation in child protection matters require that the practitioner initially arranges an appointment and meets with the client and obtains the client's signed, dated and witnessed instructions at each stage of the proceedings. Audit officers check for compliance with these requirements.

The Case Management Standards for Separate Representatives in child protection matters do not impose a mandatory requirement that Separate Representative will meet with the child/children during their appointment. The standards anticipate that Separate Representative will meet with the child/children during their appointment but the standards also specify that the Separate Representative may exercise their discretion not to meet the child/children where they have determined that such a meeting is not in the best interests of the child/children. Consequently, audit officers do not check whether the Separate Representative has met with the child/children.

File searches and social assessment reports

The Case Management Standards for Separate Representatives in child protection matters specifically require that upon their appointment the Separate Representative should contact the relevant Child Safety Service Centre and make an appointment with the current Child Safety Officer to peruse the Department's computer and paper file material and should obtain copies of relevant documents. Where the Separate Representative is unable, due to distance, to inspect the Departmental file they may ask the social assessment report writer to assist with the file inspection.

LAQ's grants policy provides that Separate Representatives should only seek financial assistances for a social assessment report or other expert report where:

- inspection of all available material has been undertaken;
- the Separate Representative certifies that a that a social assessment report/other expert report is necessary; and
- either:
    - the Departments has refused to obtain the report; or
    - it is not appropriate for the Department to obtain the report; or
    - it is the opinion of the Separate Representative that an independent report is necessary and should be obtained by the Separate Representative.

Audit officers check for compliance with the standards and the grants policy.

Attachment 4 – Legal Professional Supervision Plan – Family Law, Civil Justice and Advice Services

Purpose

Legal professional supervision is an important component of providing quality legal services to disadvantaged people and to meet legislative requirements.

As required by the LAQ Legal Professional Supervision Policy, this plan describes the legal professional supervision arrangements for Family Law, Civil Justice and Advice Services.

The supervision arrangements for regional lawyers undertaking family, civil and advice work are set out in the Regional Service plan.

Also the supervision arrangements for Dispute Resolution are set out in 'Quality Review Process – Conference Organisers, FDRPs'.

This plan is to be reviewed every twelve months.

Components of the Plan

This plan includes the following components:

1. Legal professional supervision responsibilities;
2. Induction training;
3. Continuing Professional Development;
4. Standards – case management and practice;
5. Communication;
6. Performance Review – team based;
7. Complaints procedure and policy; and
8. File audit and review.

1. Legal professional supervision responsibilities

The following outlines the respective responsibilities of the key legal professional supervisors:

- Director –
  - Ensure the implementation of this plan within the division
  - Direct supervision of Family Law, Civil Justice and Advice Services leadership positions namely Assistant Director Family Law Services, Assistant Director Dispute Resolution Services, Principal lawyer First Advice Contact Team and Principal Lawyer Civil Justice.

- Assistant Director Family Law Services – direct supervision of Principal Lawyers in Family Law Coordination, Family Law Team, Violence Prevention and Women's Advocacy and Children and Young People.
- Assistant Director Dispute Resolution Services direct supervision of Principal Practitioner Child and Family Services Team and all members of Dispute Resolution Services based in Brisbane.

- Principal Lawyer First Advice Contact Team - supervision and guidance to all lawyers in the First Advice Contact Team.

- Principal Lawyers – supervision and guidance of all staff who are members of a particular team, supported by Senior Lawyers in the team.

2. Induction training

New lawyers to the organisation will receive induction training addressing the following:

- legal professional and ethical obligations
- Legal Aid Queensland practice and case management standards
- relevant legislation – knowledge and application
- case law – research and learning
- practical skills – e.g. client communication skills, interpersonal skills
- administrative requirements – e.g. LAQ Office, Grants Online, Visualfiles

3. Continuing Professional Development

All legal aid lawyers have personal responsibility for ensuring CPD compliance to maintain practicing certification.

The Director, Assistant Directors, Principal Lawyers and Senior Lawyers will contribute to the development and delivery of a CPD training program for legal aid lawyers by assessing suitable topics for training, providing or seeking out suitable speakers and by providing feedback on subject areas.

They will use the results of the relevant file audit and legal advice audit processes to inform the planning and delivery of training, and regular case and work based discussions, to improve the legal skills and knowledge of staff.

4. Standards – Case Management and Practice

Legal Aid Queensland has developed case management and practice management standards which outline the work necessary to be undertaken to adequately represent a client and legal aid lawyers are required to comply with these in their legal practice. Legal aid lawyers will be audited according to these standards to ensure the highest quality legal service delivery and to identify training needs for the organisation.

5. Communication

An environment of open and supportive communication about legal practice issues is encouraged within the division to foster an environment of learning and improvement. Lawyers are encouraged to liaise with each other and more senior colleagues about legal practice issues. The formal requirements for communication set out below are not intended to replace informal communication between colleagues.

The Director, Assistant Directors and Principal Lawyers are to communicate and disseminate legal knowledge and organisational information to all family, civil and advice lawyers and administrative staff through the use of:

- Divisional meetings

- Meetings within streams of practice between the Director, Assistant Directors and Principal Lawyers
- Team meetings
- Regular one on one meetings for performance issues and guidance
- The sharing of feedback regarding staff performance between divisions to help improve the delivery of services and interaction with others
- Training days
- LAQ electronic medium such as the intranet, Blogs and emails.

6. Performance Development and Appraisal

The Director, Assistant Directors and Principal Lawyers are to ensure all staff have a Personal Work and Development Plan. The plans will address how the legal performance of each lawyer is to be appraised and also to identify learning and development opportunities. These opportunities include:

- Participating in continuing professional development
- Performing new roles within the organisation on a temporary basis from time to time
- Encouraging information, mentoring or coaching relationships with senior lawyers

7. Complaints Procedure and Policy

The Director, Assistant Directors and Principal Lawyers will ensure the application and compliance with Legal Aid Queensland's:

- Complaints Procedure – steps to respond to complaints
- Complaints Policy and Framework – client feedback and response
- Employee complaints management procedure and policy

8. File and Advice Audit and Review

File and audit processes are in place in all divisions. These file and advice audit processes will review the professional and qualitative performance of all family, civil and advice lawyers and other staff at Legal Aid Queensland at least every twelve months.

The Director, Assistant Directors, Principal Lawyers will review all family, civil and advice lawyers professional work once every twelve months.

The Principal Lawyers and Senior Lawyers will review the professional work of all family, civil and advice lawyers within their team or group on a regular basis in accordance with the staff member's personal work and development plan.

There will be regular reports on the results of audit and file review processes to the Chief Executive Officer and the Deputy Chief Executive Officer, together with proposals to address any issues that require remedial action identified in the audit and file review processes.

Case Management Standards
civil law

Legal Aid QUEENSLAND

Contents

Introduction

These Case Management Standards have been prepared to assist Legal Aid Queensland staff and preferred suppliers who practise in the civil jurisdiction. They cover the following areas of practice:

- Criminal Injury Compensation
- Antidiscrimination
- Domestic violence matters
- Veterans matters
- Child protection matters

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

Compliance with the standards is a 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 rules and practice directions of any courts which may issue from time to time.

Part A – General

A1. Initial interview

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

A2. Grant of aid

Approving Authority: The approving authority of a grant of aid is 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. The practitioner is to explain to the client the policy in relation to retrospective contributions and ensure that the client signs and returns the Payment of Costs form prior to commencing work on the file.

A3. Management of the client and file

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

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

The practitioner must be aware of and comply with the Best Practice Guidelines for lawyers working with clients who have experienced family and domestic violence. A copy of the Best Practice Guidelines are attached as **Annexure B**.

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 are attached as **Annexure F.**

The practitioner must be aware of and comply with the Guidelines for working with interpreters. A copy of the guidelines is attached at **Annexure G**.

A4. Counsel

When applicable, briefs to counsel must contain the following:

a. A logical and chronological index

b. Instructions to counsel

c. Copy of all relevant material

d. The brief should be marked "Legal Aid Brief" and include details of the aid available for counsel if the client is represented by an inhouse practitioner, or the LAQ proforma invoice if the client is represented by a private practitioner.

A5. Completion of matter

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

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

A6. Initial / Final contribution

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

A7. Appeal

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

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

and all time limits must be observed.

Part B – Case Management Standards specific to criminal injuries compensation

B1. Criminal injuries compensation pre Victims Assist Queensland

Prior to 1 December 2009 it was possible to lodge ex gratia applications to the Department of Justice and Attorney-General (JAG) for matters where an order by the court for criminal injuries compensation had not been made.

Prior to 1 February 2010 it was possible to file an originating application for an order for criminal injuries compensation pursuant to s24 of the Criminal Offence Victims Act 1995 and s663 of the Criminal Code.

The usual steps for conduct of a criminal injury compensation matters under the above schemes are set out in the checklists Annexure C for court applications and Annexure D for ex gratia applications. Practitioners should ensure that files are conducted so that all necessary steps are completed.

Since 1 February 2010 victims of crime can only apply for financial assistance directly to Victim Assist Queensland which commenced operation on 1 December 2009 unless an application was filed in court or an application lodged before the applicable cut-off dates.

Part C – Case Management Standards specific to Anti-Discrimination matters

C1. Interview

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

1. Administrative and legal requirements

a. obtain full particulars of all other parties, including current address if possible;

b. explain the practitioner's role, and the limitations of that role;

c. explain the client's role;

d. request copies of any documentation relevant to the matter;

e. explain the legal processes and procedures specific to anti-discrimination matters. The practitioner is to obtain a comprehensive account of the circumstances surrounding the complaint of discrimination and the outcomes sought by the client. Following this interview, the practitioner is to prepare a statement with client instructions which must be signed by the client.

f. ascertain whether an interpreter will be required for subsequent attendances.

2. Non administrative or legal requirements

a. be prepared to work with or through interpreters, support workers and friends or family where appropriate, but be sure to encourage the client to participate to the greatest possible degree;

b. be sympathetic to the emotions and concerns that the client may have, and be prepared to divert from the usual process if these emotions or concerns dictate;

c. be familiar with other needs or issues that may be addressed and be prepared to offer meaningful advice and referrals;

d. be focused in your approach to obtaining sufficient information to properly represent the client, and do not allow the interview to become sidetracked. One hour should be set aside for the interviews, but may be extended if necessary.

C2. Witnesses and supporting evidence

The practitioner is to obtain signed statements from all relevant witnesses.

C3. Lodging a complaint

When lodging a complaint to the Human Rights and Equal Opportunity Commission (HREOC) / Anti-Discrimination Commission Queensland (ADCQ), the submission should include a signed client statement, details of the sections which have been breached and all supporting statements and material.

C4. The Conciliation Conference

The following action is required for a conference:

a. Prior to the conference, discuss with the client any monetary and non-monetary outcomes sought by the client. Research decided Tribunal cases and ADCQ/HREOC case studies/conciliation registers and advise the client about quantum.

b. Arrange for the client to attend for a brief interview for 15 to 30 minutes prior to the Conference time to confirm the issues and concerns of the client and the Confidentiality provisions of the Conciliation Conference, and remind the client of the Conference procedure;

c. During the Conference the practitioner should:

i. Allow the client to do most of the talking where appropriate;

ii. Assist where necessary to summarise the client's concerns and proposals or supply necessary details omitted by the client;

iii. Ask for a private meeting if the client becomes distressed or otherwise requires legal advice;

iv. If the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted;

v. At private meetings during the Conference, carefully explain options and proposals discussed during the Conference to the client and give the appropriate legal advice. Legal Aid implications and consequences of agreement or failure to reach agreement should also be discussed. The client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement. Reality test all proposals for agreement with the client including risk of costs if complaint proceeds;

vi. Ensure that any agreement reached is explained in detail to the client and is fully understood by the client.

C5. Confirm outcome with client

If an agreement was reached by the parties, the practitioner is to write a letter to the client confirming the Agreement and enclosing a typed copy of the Agreement.

C6. Preparation for hearing at the Queensland Anti-Discrimination Tribunal or Federal Magistrates Court or Federal Court

When preparing for hearing, the practitioner should:

i. ensure an updated grant of aid

ii. inform the client in writing of the hearing dates, confirming their need to attend along with their witnesses and steps taken in preparation for trial

iii. confirm Counsel for the hearing – by letter setting out hearing dates and fees payable pursuant to Legal Aid Scale of Fees

iv. issue any Subpoenas, if necessary, - together with conduct monies

v. inform witnesses of hearing dates and ensure they have a copy of their Statements, that they are available for giving evidence and arrange times for their attendance to minimise waiting time

vi. liaise with the other parties/their legal representatives for the preparation and filing of documents pursuant to Directions

C7. Brief Counsel for settling points of claim and hearing

The practitioner should retain and brief Counsel as soon as practicable. The Brief to Counsel must include all relevant Documentation. Instructions to Counsel should set out the hearing dates, the basic premise of the case and list the witnesses to be called, whether Points of Claim need to be settled and the date for filing, and fees payable pursuant to Legal Aid Scale of Fees.

C8. Conference with Counsel

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

C9. Attend at the hearing and instruct Counsel

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

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

Ensure all accounts are finalised in a timely manner.

C10. Appeals

Following final judgment being delivered by the Court or Tribunal, write to the client informing them of the Orders made and Reasons for Judgment, supplying copies of both sets of documents if they are available.

Consider the appropriateness or otherwise of Appeal and inform the client of their options in relation to Appeals.

Part D – Case Management Standards specific to domestic violence

D1. Telephone instruction/advice

Information should be recorded when giving telephone advice as this will save the need for its repetition at a later time. The practitioner must be aware of and comply with the Best Practice Guidelines for Lawyers for working with clients who have experienced violence. A Copy of the Best Practice Guidelines are at **Annexure F.**

D2. Initial interview

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

Administrative and legal requirements

a. ensure the client has the information sheet

b. obtain full particulars of the other party, including nature of relationship and current address

c. explain the practitioner's role, and the limitations of that role

d. explain the client's role

e. request copies of any court documentation relevant to the matter

f. obtain a comprehensive account of the history of the relationship and of acts of domestic violence committed during that time (be as specific as possible with these instructions)

g. obtain detailed instructions on any recent acts of domestic violence, and in particular what motivated the immediate desire to seek protection

h. obtain instructions on why there is a likelihood that domestic violence will occur again

i. with reference to s20 of the Domestic and Family Violence Protection Act, the practitioner should determine whether an application to the court would be likely to succeed on the basis of the instructions and information to hand (the practitioner should explain these considerations to the client, and deal with the possibility that corroborating evidence may be required)

j. obtain information on children or other persons who may also need or wish to be included on an order as aggrieved persons (explain the requirements in this regard)

k. obtain information on the conditions which are sought to be included on a Protection order and the need for any qualifications

l. ascertain whether an interpreter will be required for subsequent attendances.

Non administrative or legal requirements

a. be prepared to work with or through interpreters, support workers and friends or family where appropriate, but be sure to encourage the client to participate to the greatest possible degree

b. be sympathetic to the emotions and concerns that the client may have, and be prepared to divert from the usual process if these emotions or concerns dictate

c. be familiar with other needs or issues that may be addressed such as children, accommodation, counselling, financial support, property settlement and ideas of reconciliation, and be prepared to offer meaningful advice and support

d. be focused in your approach to obtaining sufficient information to properly represent the client, and do not allow the interview to become sidetracked (one hour should be set aside for the interviews, but may be extended if necessary).

D3. Urgent temporary orders

If, after obtaining instructions on the history of domestic violence and the most recent incident, it becomes apparent the client is in danger of physical injury or his/her property is in danger of substantial damage (s32 requirements for ex-parte temporary order), an urgent application for a temporary protection order may be made. Obtain clear instructions on living arrangements as to whether the order will, or needs to have the effect of, evicting the respondent to the proceedings from his or her premises. Extreme care must be taken in making ex-parte applications that require such a condition as Magistrates may be reluctant to make these orders.

D4. Court procedure

A clear explanation of the application and court procedure must be given to the client. All possible options and likely outcomes of the application need to be covered.

D5. Implications of application

The practitioner should discuss the effects and implications of an application with the client, especially the effect of the existence of a protection order. This includes the legal prohibitions placed on the respondent, the procedure if breaches occur, and the necessity and availability of a variation or revocation of the order or certain conditions should the need arise. This is especially important if there is a likelihood that there will be a reconciliation.

D6. Completion of DV 1 application form

An application in the prescribed form is completed by the client with the practitioner's guidance and assistance. All sections are completed with special attention being given to the substantive sections, those being Nos. 13, 14 and 15 (history and recent incident of domestic violence and likelihood of recurrence). Any aggrieved persons are listed and reasons for their inclusion are also contained within Nos. 13, 14 and 15. Any weapons should be declared and the required conditions must be decided upon. Include qualifications in relation to contact, property settlement, possible reconciliation or attendance at a legal aid conference.

D7. Acting as an authorised person

Should the practitioner believe that it would be better for that person to make the application on behalf of the client, as an authorised person (s14, s60), a written authority should be obtained (see Work Instructions Manual Appendix 2). The relevant section of the application is completed. The practitioner signs the application and has it witnessed. The practitioner is required to seek the leave of the court to act as an authorised person. Any practitioner who is not admitted as a solicitor or barrister needs to appear as an authorised person and must have a written authority and seek the leave of the court.

A disadvantage of such an application, is that the contents of the application become hearsay only. It is preferable to have the client complete the application and for a practitioner to appear as an authorised person only.

A hearsay affidavit may be prepared wherein the authorised person confirms that the application was prepared from instructions provided by the aggrieved spouse and that it is true and correct to the best of their knowledge. This affidavit can be tendered to support the application.

D8. Lodging an application for mention

The application is signed and witnessed by a Justice of the Peace or Commissioner for Declarations. Six copies of the application are made and the original and four copies are filed in the Magistrates Court Registry.

A copy is retained on file and one for the client. If the matter is urgent and an ex-parte temporary order is required, the practitioner needs to ask for the matter to be listed before the next available court. If this is not the case, a mention date in approximately two weeks is obtained. Efforts are made by the Police to serve the respondent in the meantime.

D9. Service

The Police are required to serve the application on the respondent. Private service is not sufficient for an application, but can be used for an application to revoke or vary.

D10. Evidence and witnesses

These matters will only usually arise if the application for a protection order is contested and listed for hearing. Doctors' reports evidencing injuries, previous protection orders, and statements from witnesses may be necessary to support your client's application. Witnesses to specific acts of domestic violence need to be organised well in advance and the practitioner should attempt to speak with them prior to the hearing to determine what they will be able to say.

D11. Negotiations with the respondent/solicitor

It may be appropriate for the practitioner to write to the respondent or their solicitor as to the future conduct of the case. A more detailed explanation of the allegations can be provided as well as some brief information on the legislative requirements and the likely outcome of the application. It may be prudent to confirm that an order will not be a criminal conviction, although criminal penalties apply to breaches and that qualifications allowing for contact will be included if appropriate. The procedure for consent could also be explained in case the respondent wishes to write to the court in advance and does not wish to attend in person. Undertakings may be offered by the respondent at any stage of the proceedings.

D12. Arrangements for court

Ensure appropriate arrangements have been made with the client for their appearance at court. If there are security or safety issues, it may be wise to meet the client at the office and accompany them to the court. In extreme cases the court staff and police may be informed of your concerns.

Check the client understands the procedure for the court attendance and is advised correctly in relation to the need to bring other witnesses or documentation. Allow for sufficient time to confer with your client and with the other party or legal representative prior to court.

D13. The court process

Shield the client from any unnecessary conflict, or even contact with the other party if appropriate. This may mean that the client does not enter the court when the matter is called on. Separate rooms are sometimes available for an aggrieved spouse and support workers to wait prior to their applications being heard. The practitioner may negotiate with the respondent and this may result in either an undertaking to consent or an expression of a desire to contest. Either way, your client will not be required in court. Explain the negotiations to the client at all times. Ensure that the client's position is not compromised in any way and always seek instructions before agreeing to any proposals.

D14. The application

If a respondent consents to an order, the matter will be called on and both parties will make their appearances. The Magistrate will ask what is the position of the parties, and will be told by either party that the respondent has agreed to consent. The terms of the order will then be discussed and the effect of the order may be explained to the respondent. The parties are then asked to wait for the orders to be typed.

At a hearing, the aggrieved spouse gives evidence to support the application and will be subjected to cross examination. All witnesses are called before the respondent has the opportunity to respond. The same cross examination and re-examination process applies. Final submissions are then made and the Magistrate gives judgment. The rules of evidence do not strictly apply to these proceedings (s84) however the hearings follow the usual court process and where possible evidentiary rules are upheld.

The Work Instructions Manual deals in detail with the process of the application in the courtroom.

Part E – Case Management Standards specific to veterans' matters

E1. Client's statement

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

E2. Checklist

The practitioner must complete the Checklist for Administration of War Veteran's Matters. A copy of the checklist is attached as **Annexure E**. The practitioner must complete and return the checklist to Legal Aid Queensland before consideration may be given to a request for legal aid for Stage 2 of a matter.

E3. Specialists' reports

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

Part F – Case Management Standards specific to acting as Separate Representative – Child Protection

F1. Acting as a Separate Representative

LAQ in conjunction with private practitioners has developed standards for solicitors who are appointed to act as a Separate Representative pursuant to the provisions of the Child Protection Act (CPA). These standards apply to both Children's Court and Queensland Civil and Administrative Tribunal (QCAT) matters. All Separate Representatives should observe the standards as they provide an indication of what can be expected of a Separate Representative during the course of a matter. The following are recommended minimum standards of behaviour and practice and need to be read in conjunction with existing professional and ethical standards governing the profession, judicial directions, practice directions, protocols, case law and related legislation.

It is important to note that while the legislation provides limited guidance as to the role of the Separate Representative it does not provide any guidance as to how this role is to be performed or the powers, duties and rights of the Separate Representative.

The Separate Representative must comply with any rules, regulations, practice directions, protocols and case management guidelines that may arise in relation to the role.

The Separate Representative has a paramount responsibility to act in the best interests of each of the children they represent. This responsibility carries with it a duty to act impartially, to present direct evidence to the court or QCAT about the child, the child's wishes and matters relevant to the child's welfare, to make submissions having regard to all of the evidence before the court or QCAT and to assist the court or QCAT in making a decision that is in the best interests of the child.

The professional relationship between the child and the Separate Representative is not a "Solicitor-Client" relationship. The Separate Representative cannot offer the child a confidential relationship. The child needs to be aware of the basis of the relationship and in particular needs to be made aware that the court and the Separate Representative will listen to what they have to say but that neither are bound by those wishes.

It should be remembered at all times that the role of the Separate Representative relates to the proceedings presently before the court or tribunal and ultimately that role will cease. The parties, including the Department of Communities (Child Safety Services) (the Department) and the child will possibly have some ongoing involvement with each other after the role of the Separate Representative ceases. Care should be taken by the Separate Representative to ensure that good relations between the parties can be maintained after the role of the Separate Representative ceases.

F2. Conduct of separate representation files

Practitioners undertaking Separate Representation services in child protection and/or QCAT proceedings are subject to all provisions of the Service Agreement and Undertaking in relation to the conduct of these matters. In the conduct of these matters, practitioners will no doubt utilise the services of other lawyers and support staff to assist in the running of the Separate Representative's file. This will include assisting in:

- gathering evidence
- issuing subpoenas
- attending at court for uncontested mentions and the making of previously agreed orders by consent
- arranging appointments for assessments
- the preparation of the case for mention, conference and hearing
- arranging attendance of witnesses at court or the tribunal.

Any assistance must be subject to the supervision of the Separate Representative at all times.

All substantive decisions in relation to the conduct of the case and any exercise of discretion will be taken personally by the Separate Representative, or an appropriately qualified agent (i.e., another member of the Independent Children's Lawyer and Separate Representative Panel who has been approved to undertake Separate Representative work). This will include:

- attending the Department to peruse file material

- determining an appropriate expert to retain in a matter
- conducting case discussions with any expert retained
- determining any recommendations to be made to the court at any stage
- attending Family Group Meetings on behalf of the child
- attending Court Ordered Conferences on behalf of the child
- being personally responsible for instructions to Counsel during the course of a hearing.

Subject to appropriate notice being given and appropriate staff being available the inhouse Separate Representatives are prepared to undertake town agency matters for other members of the Panel.

F3. Inhouse precedent package

Where applicable it is expected that in house practitioners will use the relevant letters and documents contained in the precedent package.

F4. Confidentiality

The Separate Representative is bound by the confidentiality provisions of the *Child Protection Act 1999* and in particular s188 which provides that as a 'receiver' of information about another person's affairs the Separate Representative cannot give access to this information unless the disclosure is for a purpose directly related to the child's protection or welfare or is otherwise required or permitted by law.

Any provision of documentation to report writers or other experts should be accompanied by a reminder of the confidentiality provisions. Any documentation provided to report writers or other experts by the Separate Representative must be retrieved from the expert and destroyed at the conclusion of the matter.

F5. Dealing with the Department

Communications with the Department should take the same form as with any other party to the proceedings. It should also be taken into consideration that although a professional party in the proceedings, the Departmental person is unlikely to be legally represented until late in the proceedings. Particular care should be taken to accurately record the details of any conversations with Departmental officers. Where possible the Separate Representative should confirm conversations with Departmental officers in writing.

F6. Dealing with unrepresented parties

Communications with an unrepresented party should take the same form as with another legal practitioner. Particular care should be taken to accurately record the details of any conversations with the unrepresented party. The Separate Representative should consider sending a letter to the party confirming the details of the conversation.

At all times the Separate Representative should use plain English when communicating with unrepresented parties.

F7. Notice of Address for Service

Upon receipt of the file material from LAQ the Separate Representative should file a Notice of Address for Service in the relevant registry.

The Notice of Address for Service should be served on all other parties. In the case of the Department the practitioner should serve a copy of the Notice of Address for Service on both the relevant Child Safety Service Centre and also the Court Services Unit.

F8. Letters to parties and/or their legal representatives

Within five (5) days of their appointment the Separate Representative should send a letter to the parties advising their appointment and explaining the role of the Separate Representative in the proceedings. They should also enclose a copy of the relevant LAQ factsheet. If the party is unrepresented the Separate Representative may forward a Questionnaire with the initial letter to be answered by the party and returned to the Separate Representative along with blank authorities for third persons to release information to the Separate Representative.

If the party is legally represented, the initial letter will be sent to the legal representative along with a copy of the relevant LAQ factsheet. The Separate Representative may also forward to the legal representative a copy of the questionnaire and blank authorities requesting that they have their client complete them and return them to the Separate Representative.

Following on from the initial letters, the Separate Representative should talk to the solicitors or the parties, as the case may be, to determine in an informal way, if possible, any sources of information that the Separate Representative may need to contact and to gain an early insight into the attitudes of the parties and their solicitors.

In all written or verbal communications the Separate Representative should take care to adopt Plain English guidelines.

F9. Letters to the child/children

Upon their appointment the Separate Representative should consider whether it is appropriate to write to the child/children to introduce themselves and enclose copies of relevant information sheets. In deciding whether this is appropriate, the Separate Representative should take into consideration the age and ability of the child to understand, the child's knowledge of the proceedings and the reasons for the appointment of the Separate Representative.

F10. Dealing with non-parties

During the course of their appointment the Separate Representative may have reason to talk to non-parties interested in the proceedings. The Separate Representative should take into consideration that, in accordance with the legislation, these persons are not parties to the proceedings but the court may hear submissions from a member of the child's family or anyone else the court considers relevant to the proceedings and may refer them for legal advice in this regard.

The Separate Representative should accurately record the details of all conversations with non-parties and should take special care not to provide confidential information or documents to them.

F11. Dealing with other people working with the child/family

During the course of their appointment the Separate Representative may need to communicate with other people who are working with the child including counsellors, school teachers and other persons. Care should be taken in these discussions as these persons have an ongoing relationship with the child or the child's family which will outlive the involvement of the Separate Representative.

If information about these persons has initially been obtained by the Separate Representative from their perusal of the Department's file the Separate Representative should, prior to contacting the person, notify the Department of their intention to contact the person. The Separate Representative may require the assistance of departmental personnel to obtain further information from the person or to facilitate contact with the person.

The Separate Representative should accurately record the details of all conversations with other professionals and should take special care not to provide confidential information or documents to them.

F12. Attendance at the Department to inspect file

Upon their appointment the Separate Representative should contact the relevant Child Safety Service Centre and make an appointment with the current Child Safety Officer to peruse the Department's computer and paper file material.

Initially the Separate Representative should obtain copies of the following documents (please note this list is provided as a guide only and is not exhaustive):

- notifications, investigations and assessments
- SCAN minutes
- Family Group minutes
- any external assessments or reports e.g. medical or educational
- child and parental strengths and needs assessments
- copies of case notes relating to observations of contact or conversations with other professionals e.g. school or doctors
- relevant police checks
- carer assessments
- case plan
- other relevant case notes.

The Separate Representative will usually be required to sign a 'Records Management Services – Access to information – interim receipt form'. While practice may differ from office to office, Departmental procedures require Departmental officers to photocopy the material and the release of the material must be approved by senior staff.

It is anticipated that after performing the physical inspection the Separate Representative will clearly tag each of the documents of which the Separate Representative requires copies.

Once the documents have been photocopied and approved those documents will be forwarded to the Separate Representative by the Child Safety Service Centre.

Over the course of the matter it may be necessary for further inspections to occur and the Separate Representative should follow the procedures outlined above in those circumstances.

Where a Separate Representative is unable, due to distance, to inspect the Departmental file they may ask the social assessment report writer to assist with the file inspection. In these circumstances the Separate Representative should inform the relevant Departmental officer the name of the person who will be undertaking the inspection and the procedure outlined above will apply to their inspection. The Child Safety Service Centre will only provide copies of the documents requested to the Separate Representative who will then need to provide the report writer with the documents received.

F13. Social assessment reports

The Separate Representative should consider whether a Social Assessment Report or other expert report is required. The Separate Representative should be wary of obtaining unnecessary reports and exposing the child to systems abuse. The Separate Representative must consider why the report is being obtained and whether in the circumstances the report is necessary.

Separate Representatives should carefully consider what type of report is required including which persons need to take part in the assessment. If the assessment is to involve the parties as well as the child, the Departmental officers involved in the matter must also be interviewed as a party to the proceedings.

Before applying for a grant of aid to obtain a report the Separate Representative should use their professional judgment to:

- confirm that any previous reports on the Departmental file are not sufficient to assist the court or QCAT in the determination of the matter;
- determine whether obtaining a social assessment or other report will assist the court or QCAT in its determination of:
    - the outstanding issues before the court or QCAT and
    - the orders that will best promote the best interests of the child;
- consider whether the required report should properly be obtained by the Department, for example where the Department alleges that a parent has psychiatric issues that require an assessment then the Department should obtain and pay for that report as part of their case.

Where the Separate Representative considers that the report should be obtained as part of the Departmental case, then they should contact the Department and request them to obtain it. It is good practice to make such a request in writing and to provide a copy of the request to the Departmental Court Services Unit. Where the Department refuses to obtain the report and the Separate Representative determines that the report is necessary in determining the child's best interests, then the Separate Representative may apply for a grant of aid to obtain this report.

Where the costs of a report are likely to exceed the costs paid at LAQ rates, then the Separate Representative may contact the Department and request financial assistance in obtaining the

report. Separate Representatives should be aware that Departmental policy dictates that where the Department are contributing to the cost of the report, then the Department will usually want some input into who is to be engaged, the terms of the brief, and what material is to be provided to the expert. In these circumstances, the process for briefing the expert is similar to briefing a single expert in the family law jurisdiction.

Where the Separate Representative determines that a joint brief of the expert is not appropriate in the circumstances, they may apply to LAQ for payment of additional costs. Please note that such requests must be made prior to any costs being incurred.

If the Separate Representative decides to obtain a report, letters should be sent to each of the parties, including the Department, notifying them that a report will be prepared, the name of the report writer and enclosing relevant LAQ factsheets.

F14. Engaging a report writer

The Separate Representative should engage an expert having carefully considered the issues to be addressed and the qualifications and experience of the expert. In selecting an expert the Separate Representative may consult with other Separate Representatives or experts. The Separate Representative should brief the expert with a clearly completed referral including all information and documentation necessary to complete the assessment. The referral should specify the issues the expert is to address in their report whilst not fettering the assessment process of the expert. The Separate Representative should clearly mark in the brief to the expert that the material is confidential and must not be disclosed.

The Separate Representative is not bound to adopt the recommendations of the expert in submissions. The recommendations are to be considered as one part of the evidence before the court and all of the evidence must be evaluated in context.

Where an expert produces a report the report should be attached to an affidavit setting out the expert's qualifications and experience. A copy of the affidavit and report should be filed in the registry and served on all parties. In the case of the Department the Separate Representative should serve a copy of the affidavit and report on both the relevant Child Safety Service Centre and also the Court Services Unit.

F15. Meeting with the child/children

It is anticipated that the Separate Representative will meet with the child/children during the term of their appointment. Before meeting with the child consideration needs to be given as to why, when, how and where the meeting occurs, the age of the child/children, whether the child is expressing a wish and the impact meeting the children may have on the children.

In order to protect their independence the Separate Representative should consider meeting the child away from the Departmental offices. It is best practice for the Separate Representative to avoid meeting with the child alone and thus avoid becoming a witness in the proceedings. Accordingly any meeting with the child/children should ideally be facilitated by the social assessment report writer. Where no report writer is engaged the Separate Representative should ideally meet the child in the presence of a member of the child's family, the child's carer or other third person. Any such meetings should be conducted on the basis that they are reportable.

The Separate Representative should take particular care to avoid exposing the child to a risk of systems abuse. The Separate Representative may exercise their discretion not to meet the child where they have determined that meeting with the child is not in the child's best interests.

When meeting with a child the Separate Representative should explain their role and answer any questions that the child has about the legal process. The Separate Representative should also explain that while their role is to present the child's wishes to the court it is ultimately the court who will make a decision about the matter.

F16. Family Group Meetings

S51L of the Child Protection Act provides that Separate Representatives attend and participate in family group meetings.

Subject to a grant of aid the Separate Representative should attend Family Group Meetings arranged by the Department during the term of the matter.

Separate Representatives should be mindful that matters discussed at Family Group Meetings are admissible in the court proceedings.

Attention should be given to the development of an appropriate case plan which reflects the parent's capacity to engage with support, therapeutic or other services. Prior to the meeting the Separate Representative should also ascertain what assistance or support the child requires in their current placement and what interventions would be in the child's best interests.

If an earlier case plan is in existence consideration should also be given to the outcomes and goals which have already been achieved by the family and which do not need to be included in the new case plan. The Separate Representative may request that previous outcomes be included in the case plan with a notation that the goal has been achieved by the family.

Where a Separate Representative does not agree with case plan outcomes or actions proposed by the Department, then they should ensure their disagreement is noted in the case plan document.

Separate Representatives should take care to ensure that the goals and outcomes listed in the case plan are achievable by the family and the department and include some mechanism to measure progress in achieving the case plan goals.

Where a case plan has been reviewed, the Separate Representative should draw the Department's attention to their obligation under s51X of the CPA to file a copy of the review report along with the revised case plan.

F17. Attending court events

The Separate Representative should attend all court events in the matter in accordance with their grant of aid.

Prior to each court event the Separate Representative should:

1. obtain an appropriate grant of aid to attend
2. consider the possibility of settlement prior to the court event
3. ensure they have been served with any updating material
4. consider whether an interim order in favour of the Department or other suitable person is necessary in the circumstances.

Where a Separate Representative is unable to attend court for a court event due to the court being in a remote area or their other court commitments, the Separate Representative should notify the court, in writing, at least five working days prior to the court mention of their inability to attend and request arrangements be made for them to take part in the court event by telephone.

Where the Separate Representative is unable to engage an agent to appear, and arrangements for them to appear by telephone have not been made, then the Separate Representative must provide detailed written submissions to the court, and copies to each of the parties, prior to the mention of the matter. These submissions should include an indication of the Separate Representative's position in relation to any temporary orders, for example, a temporary order granting custody to the Department.

The Separate Representative must also be contactable by telephone during the time of the mention.

Subject to appropriate notice being given and appropriate staff being available the inhouse Separate Representatives are prepared to undertake town agency matters for other members of the Panel.

F18. Applications for adjournments

From time to time the Separate Representative may need to request that a matter be adjourned. The Separate Representative should only make an application for an adjournment if it is in the best interests of the child to do so bearing in mind that child protection matters should be dealt with as quickly as possible in the best interests of the child.

Where the Separate Representative intends to obtain an adjournment they should notify all parties of their intention and the reasons why the adjournment is being sought.

F19. Applications on adjournment

At each mention of the matter the Separate Representative should consider their position in relation to any temporary orders relating to the child/children, for example an order that the chief executive have interim custody of the children. The Separate Representative should be mindful of any need to secure the child's protection during the adjournment period and whether an interim order is necessary to secure that protection.

Prior to each court event the Separate Representative should also review the current case plan and assess its appropriateness.

The Separate Representative should also consider s67 & s68 of the CPA and whether application should be made for orders for:

a. a social assessment report

b. medical examination or treatment of the child

c. contact with the family during the adjournment period

d. the convening of a family group meeting

e. the convening of a court ordered conference.

Prior to the day of the mention the Separate Representative should make contact with the relevant court to ascertain the applicable practices and procedures in that registry, for example, in some Children's Courts the Magistrate will require legal representatives to remain seated throughout any appearance.

On the day of the mention the Separate Representative should ensure their attendance in a timely manner. The court will need to be advised of the material upon which the Separate Representative intends to rely to support any application for interim orders or for interim orders to be discharged. The court may ask for the submissions which support the Separate Representative's position. Reference should be made to relevant sections of the CPA and the relevant procedural rules.

When considering submissions, regard should be had to the matters referred to in ss 5, 9, 10, 59 and any other relevant sections of the CPA.

Following each interim hearing the Separate Representative should consider whether or not to advise the child/children of outcome of the hearing and the effect of any orders made by the court.

The Separate Representative should ensure that copies of every order are received from the relevant registry and placed on the file.

F20. Entering into negotiations

If the Separate Representative forms a view in relation to the matter that view should be made known to the parties through their solicitors if they are represented and directly if they are not, as soon as practicable after the view is formed.

In entering into negotiations the Separate Representative should keep in mind their role to act in the best interests of the child.

In considering any settlement proposals the Separate Representative should have regard to the appropriateness of the case plan in relation to the children and whether the case plan requires amendment prior to any orders being made.

If the parties reach an agreement with which the Separate Representative is unable to agree, the matter should be referred to the court and the Separate Representative should make submissions stating their view.

F21. Court Ordered Conference

The purpose of the Court Ordered Conference is to decide the matters in dispute or to try to resolve them. The Separate Representative must, subject to a grant of legal aid, attend the Court Ordered Conference.

At the Court Ordered Conference the Separate Representative should advise the parties of their view and of any prospects of settlement. The Separate Representative should assist in making recommendations for the future conduct of the case.

At the conclusion of the conference the conference convener will prepare a written report for the Magistrate on the outcome of the conference including whether an agreement has been reached.

Where an agreement has been reached, the report will reflect the agreement and the order sought and the report is to be signed by the convener, the parties and legal representatives and placed on

the court file. Separate Representatives should also sign the report and ensure they receive a copy of the report from the conference convenor.

Communications at a Court Ordered Conference are confidential and can only be used in court proceedings with the consent of all of the parties. If the Separate Representative wishes to advise the court of the content of communications at the Court Ordered Conference they should first obtain the consent of the parties.

In the event that subsequent Departmental material contains communications from the Court Ordered Conference representations should be made the Department to withdraw the material. In the event the material is not withdrawn then the Separate Representative should make an application to the court to disregard that material.

F22. Mention following the Court Ordered Conference

The matter will be mentioned again after the conclusion of the Court Ordered Conference. If an agreement has been reached then orders can be made at this mention.

Where no consent has been reached and the matter is proceeding to a contested hearing the Separate Representative should use this court event to obtain directions on the steps that need to be taken for the preparation of the matter for trial.

Things to do to prepare for the mention:

1. Where possible develop a case theory.

2. Prepare a plan for the trial – What are the issues? What evidence is needed to support each of the parties application? How long will it take to prepare for trial?

3. Consider the need for expert witnesses and a social assessment report or an update to an existing report.

4. Ascertain the review date for the current case plan and whether it will need to be reviewed prior to the trial.

5. Consider the likely number of witnesses and the length of trial – include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions.

6. Speak to proposed Counsel and confirm their availability.

7. Request a date for hearing and where possible filing directions.

8. Consider whether the matter is complex and should be listed before a specialist Children's Court Magistrate.

At the mention, the Separate Representative should seek directions for the preparation of the matter and filing dates for each party. The Separate Representative should seek that the Department file its material first, then the Separate Representative and ensure that sufficient time is allowed for the parents to file their material in response.

Immediately after the mention, aid should be sought on for the preparation of material for trial and attendance at the trial. Where the matter is complex aid should be sought for Counsel.

Where the matter has been listed for trial, it is suggested that the Separate Representative seek trial directions in a form similar to those set out in **Annexure Q.**

F23. Briefing Counsel

Having consideration to the funding policy of LAQ, Counsel may be briefed to appear for the Separate Representative at a hearing.

The Separate Representative should retain and brief Counsel as soon as practicable. The brief to Counsel must include all relevant court documentation including any trial plan, copies of any subpoenaed material available [or summary of same if necessary though copies of material should be sought if the matter is progressing to a trial], copies of relevant diary notes, correspondence and other documentation.

Instructions to Counsel should set out the trial dates and registry in which the proceedings are listed for hearing, the basic premise of the case, list the witnesses to be called by each party, a statement as to the relevance of that evidence and confirmation of fees payable pursuant to Legal Aid Scale of Fees.

F24. Conference with Counsel

The Separate Representative should arrange a conference with Counsel as early as practicable.

F25. Departmental preparation for trial

Where matters are proceeding to a contested hearing the Department will usually engage Crown Law to appear at trial. Where Crown Law are not available, the Department may engage members of the private bar.

Officially Counsel is instructed by the applicant for the child protection order. In practice the matter is usually prepared by the Court Coordinator in the local Child Safety Service Centre in conjunction with the relevant departmental officer in the Court Services Unit. The Separate Representative should liaise with those officers and any legal representatives of the parents with regard to preparation of the matter for trial.

F26. Evidence and witnesses

These matters will only usually arise if the application for a protection order is contested and listed for hearing. Doctors' reports evidencing injuries, previous protection orders, and statements from witnesses may be necessary to support the party’s competing applications. Witnesses will need to be organised well in advance. Where the Separate Representative is calling a witness they should attempt to provide that evidence to the court by way of affidavit material filed and served on the parties.

If the Separate Representative is seeking an alternative child protection order to that sought by the Department attention should be given to the development of an appropriate case plan which reflects the order sought by the Separate Representative.

The Separate Representative should serve all parties with their material. In the case of the Department the Separate Representative should serve any material on both the relevant Child Safety Service Centre and also the Court Services Unit.

The Separate Representative should ensure that the parties call all the relevant witnesses to ensure that the matter can be determined in the child's best interests. Where both parties refuse to call a relevant witness the Separate Representative should consider calling that witness on behalf of the Separate Representative.

Where the Separate Representative is calling a witness it is their responsibility to ensure the witnesses' attendance at the hearing.

It is the role of the Separate Representative to test the case of each of the parties at trial. In this regard it would be normal practice for the Separate Representative to cross examine all relevant witnesses regardless of whose case they are called in.

F27. Issuing of subpoenas

Any witness who is to receive a subpoena should be given advance notice of the subpoena and should be served as soon as possible. Attempts may be made to accommodate expert witnesses and the timing of their evidence where practical and the court should be made aware of any scheduling difficulties at the earliest opportunity.

F28. Preparation for trial

When preparing for trial, the Separate Representative should:

1. ensure an updated grant of aid
2. confirm Counsel for the trial – by letter setting out trial dates and fees payable pursuant to Legal Aid Scale of Fees
3. issue Subpoenas – together with conduct monies
4. inspect any material returned under subpoena on behalf of the other parties
5. inspect the Departmental file in its entirety
6. inform witnesses of trial dates and ensure they have a copy of their affidavits or evidence, that they are available for giving evidence and arrange times for their attendance for the purposes of cross examination to minimise waiting time
7. prepare objections to affidavits and documents to be tendered
8. liaise with the other parties/their practitioners for the preparation and filing of material in accordance with court directions
9. consider whether the matter is an appropriate matter to be dealt with on the papers for eg harm is admitted, the appropriate type of order has been agreed and the only issue in dispute is the length of the order
10. consider meeting with the child to advise them of the trial, how the trial will be conducted and the evidence that the Separate Representative will place before the court about the child's wishes.

F29. Trials

The role of the Separate Representative at the hearing includes:

- to test the evidence of the parties and their witnesses by cross examination
- to ensure all relevant evidence as to the welfare of the child is before the court
- to present the views and wishes of the child where they are able to be ascertained
- to facilitate negotiations wherever it is appropriate
- to make submissions based on the evidence before the court, highlighting the alternative orders open to the court on the evidence and proposing orders that, in the opinion of the Separate Representative, are in the best interests of the child.

F30. Attend the trial and instruct Counsel

While s105 of the CPA gives the court the ability to dispense with the rules of evidence the hearing of any contested matter in the Children's Court will normally follow the usual course of litigation. In this regard Separate Representatives should ensure that the Department presents its' case first and that during the proceedings objections to evidence are made in the usual way and in accordance with the accepted rules of evidence. The Magistrate can then indicate when the rules are to be dispensed with.

The Separate Representative should take accurate records of the proceedings including witness names and times of hearing. It is also recommended that during the course of the trial an adequate summary of questions and answers be maintained.

The Separate Representative is personally responsible for instructions to Counsel during the course of the proceedings.

F31. Appeals

Where a Separate Representative is served with a Notice of Appeal, an Application for Legal Aid should be forwarded to Legal Aid Queensland with sufficient information so that the merits of any appeal can be assessed.

F32. Provision of information to the child

Following the completion of any contested matter, or the making of orders agreed to bythe parties, the Separate Representative should consider whether it is appropriate to meet with the child and explain the outcome of the proceedings.

Where the Separate Representative deems it is appropriate they should consider how best to communicate this information to the child taking into consideration the child's age and ability to understand. In this regard it would be best practice for the Separate Representative to meet with the child in the presence of the report writer who can assist in the event that the child is unhappy with the outcome.

Where an order is made it may also be appropriate for the Separate Representative to provide information to the child on the child's rights in care and the standards of care that should be provided to the child by the Department.

a) Where appropriate the Separate Representative should also inform the child/children of their rights to commence proceedings in QCAT and provide an indication of which departmental decisions are open to review.

The child/children should also be informed of their right to apply to revoke or vary the order made should their circumstances or the circumstances of their parents change in the future.

Where the Separate Representative becomes aware that the child is eligible to apply for criminal compensation or to commence negligence or other proceedings arising from their time in care or the circumstances by which they came into care, then the Separate Representative should bring these matters to the attention of the Department and, if they consider it appropriate, also to the attention of the child.

F33. Completion of the Separate Representative's role

The Separate Representative's role ends upon completion of the proceedings. If an application for appeal is lodged this may be upon the final determination of the appeal matter.

In exceptional circumstances a Separate Representative may be asked by the Department and the other parties to attend a further Family Group Meeting after the conclusion of proceedings. In those instances the Separate Representative should provide Legal Aid with sufficient information to determine the merits of funding any ongoing involvement of the Separate Representative.

The Separate Representative should also ensure that all accounts are finalised in a timely manner.

Part G – Case Management Standards specific to Child Protection

G1. Telephone instruction/advice

Information should be recorded when giving telephone advice as this will save the need for its repetition at a later time. The practitioner must be aware of and comply with the Best Practice Guidelines for Lawyers for working with clients who have experienced violence. A Copy of the Best Practice Guidelines are at **Annexure F**.

G2. Letter of introduction

Upon receipt of a relevant grant of aid the practitioner is to forward a letter to the client requesting an appointment be made.

G3. Initial interview

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

Administrative and legal requirements

a. ensure the client has the information sheet (**Annexure A**)

b. obtain full particulars of any other parties, including the nature of relationship, their dates of birth and current address

c. obtain full particulars of the Child Safety Service Centre involved with the client including details of the relevant Child Safety Officer

d. explain the practitioner's role, and the limitations of that role

e. explain the client's role

f. determine whether there are currently proceedings on foot, whether the proceedings are in the Children's Court or QCAT and request copies of any documentation relevant to the matter

g. obtain a comprehensive account of the history of the intervention by the Department including details of any previous interaction with the Department in relation to this child or any other children of the client including whether the client has any other children who are or have been subject to a child protection order (be as specific as possible with these instructions)

h. obtain detailed instructions on the Department's protective concerns

i. obtain instructions on any actions the client has taken to address the protective concerns

j. obtain information on where the child/children are currently placed and whether there are any alternative placement options

k. ascertain whether the client or the child/children are Indigenous and whether a recognised entity is involved in the matter

l. ascertain whether there is a current case plan in place in relation to the child/children

m. ascertain whether there is an upcoming Family Group Meeting or Court Ordered Conference

n. ascertain whether a separate representative has been appointed in relation to the child/children

o. ascertain whether an interpreter will be required for subsequent attendances.

Non administrative or legal requirements

a. be prepared to work with or through interpreters, support workers and friends or family where appropriate, but be sure to encourage the client to participate to the greatest possible degree

b. be sympathetic to the emotions and concerns that the client may have, and be prepared to divert from the usual process if these emotions or concerns dictate

c. be familiar with other needs or issues that may need to be addressed such as, accommodation, counselling, financial support and be prepared to offer meaningful advice and support

d. be focused in your approach to obtaining sufficient information to properly represent the client, and do not allow the interview to become sidetracked (one hour should be set aside for the interviews, but may be extended if necessary)

e. in all written or verbal communications the practitioner should take care to adopt the Plain English guidelines.

G4. Inhouse precedent package

Where applicable it is expected that in house practitioners will use the relevant letters and documents contained in the precedent package.

G5. Completion of notice of Address for Service

If there are current proceedings on foot the practitioner should file a Notice of Address for Service in the relevant Children's Court registry.

The Notice of Address for Service should be served on all other parties. In the case of the Department, the practitioner should serve a copy of the Notice of Address for Service on both the relevant Child Safety Service Centre and also the Court Services Unit.

G6. Dealing with the Department

Communications with the Department should take the same form as with another party to the proceedings. It should also be taken into consideration that although a professional party in the proceedings, the Departmental person is unlikely to be legally represented until late in the proceedings. Particular care should be taken to accurately record the details of any conversations with the nominated officer or other Departmental person. The practitioner should consider confirming conversations with departmental officers in writing.

G7. Dealing with unrepresented parties

Communications with an unrepresented party should take the same form as with another legal practitioner. Particular care should be taken to accurately record the details of any conversations with the unrepresented party. The practitioner should consider sending a letter to the party confirming the details of the conversation.

G8. Family Group Meetings

S51L of the Child Protection Act (CPA) provides that parents may have a support person attend and participate in family group meeting on their behalf and that legal representatives can act in this role.

Subject to a grant of aid the practitioner should attend Family Group Meetings arranged by the Department during the term of the matter. Practitioners should alert their clients to the possibility of the practitioner attending Family Group Meetings with them and should encourage clients to provide the practitioner of notice of any Family Group Meetings. Family Group Meetings are used to provide families with information about the child and to negotiate the matters in dispute.

Practitioners should be mindful that matters discussed at Family Group Meetings are admissible in the court proceedings.

Attention should be given to the development of an appropriate case plan which reflects the client's capacity to engage with support, therapeutic or other services. If an earlier case plan is in existence consideration should also be given to the outcomes and goals which have already been achieved by the client and which do not need to be included in the new case plan. The practitioner

may request that previous outcomes be included in the case plan with a notation that the goal has been achieved by the client.

Where a practitioner or the client does not agree with outcomes or actions proposed by the Department then they should ask the departmental staff to note that disagreement in the case plan document.

Practitioners should take care to ensure that the goals and outcomes listed in the case plan are achievable by the client and include some mechanism to measure the client's progress in achieving the case plan goals for example instead of an outcome which says the client will submit to drug testing the practitioner should push for an outcome which can be measured i.e. 5 clear drug tests in a 3 month period.

G9. Prior to each further court event

Prior to each court event the practitioner should:

1. obtain an appropriate grant of aid to attend

2. consider the possibility of settlement prior to the court event, consider the possibility of the client making no objection to the making of the order and consider filing a consent to the proposed order where appropriate

3. obtain from the client all relevant documentation

4. consider any necessary adjournment

5. consider whether or not an interim order in favour of the Department or other suitable person is necessary in the circumstances.

G10. Attending mentions

The legal practitioner should attend all court mentions of the matter in accordance with their grant of aid. If a practitioner is unable to attend court for a mention due to the court being in a remote area, the practitioner should notify the court, in writing, at least five working days prior to the court mention of their inability to attend and request arrangements be made for them to take part in the mention by telephone. If these arrangements are unable to be made, the practitioner must provide detailed written submissions to the court, and copies to each of the parties, prior to the mention of the matter. These submissions should include a reference to whether the client is agreeable to any interim orders in favour of the Department or other suitable person. The practitioner must also be contactable by telephone during the time of the mention.

G11. Applications for adjournments

From time to time the legal practitioner may need to request that a matter be adjourned. The legal practitioner should only make application for an adjournment if it is necessary for the efficient conduct in the case. The legal practitioner must be mindful that child protection matters should be dealt with as quickly as possible in the best interests of the child.

G12. Applications on adjournment

At each mention of the matter the practitioner should consider whether an application should be made to discharge any temporary orders in relation to the children, for example an order that the chief executive have interim custody of the children.

In considering such an application the practitioner should be mindful of any need to secure the child's protection during the adjournment period and whether an interim order is necessary to ensure the child's safety.

In the event that additional material in support of the client's position is available the practitioner should ensure that this material is placed before the court by way of affidavit and that the affidavit material is filed and served on all parties prior to the mention date. In the case of the Department, the practitioner should serve copies of the affidavit material on both the relevant Child Safety Service Centre and also the Court Services Unit.

The practitioner should also consider s67 & s68 of the CPA and whether application should be made for orders for:

a. a social assessment report

b. medical examination or treatment of the child

c. contact with the family during the adjournment period

d. the convening of a family group meeting

e. the convening of a court ordered conference

f. the appointment of a separate representative.

Consideration should be given to an order for the appointment of a separate representative if the facts of the case warrant such an order, if the matter is to be contested or if the Department are applying for a long term guardianship order in relation to the child/children. The role & responsibilities of the separate representative must be explained to the client and the obligations of the client must be discussed with them.

Prior to the day of the mention the practitioner should make contact with the relevant court to ascertain the applicable practices and procedures in that registry, for example, in some Children's Courts the Magistrate will require legal representatives to remain seated throughout any appearance.

On the day of the hearing, ensure attendance in a timely manner. The court will need to be advised of the material upon which the practitioner intends to rely to support their client's application. The practitioner will also be asked for the submissions which support their client's case. In this regard reference should be made to relevant sections of the CPA, relevant procedural rules and any material which has been filed in the matter.

When considering submissions, regard should be had to the matters referred to in ss 5, 9, 10, 59 and any other relevant sections of the CPA.

Following each mention the practitioner should advise the client in writing of the outcome and their rights and obligations as a result of any orders made by the court. The practitioner should also

consider and provide advice in relation to any possible review or appeal of the decision. This advice should be confirmed in writing to the client and this advice should also advise of the next court date and the need for the client to attend. In due course the practitioner should provide the client with a sealed copy of any orders made.

The practitioner should ensure that copies of every order are received from the relevant registry and placed on their file.

G13. Consents and instructions

If the client makes a decision to consent to the proposed child protection order the practitioner should obtain the client's signed, dated and witnessed consent to the order. The practitioner should also 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.

G14. Court Ordered Conference

The purpose of the Court Ordered Conference is to decide the matters in dispute and to try to resolve them. The practitioner must, subject to a grant of legal aid, attend the Court Ordered Conference. At the discretion of the conference convenor the client may also have a support person in attendance.

At the Court Ordered Conference the practitioner should advise the parties of any prospects of settlement and assist in making recommendations for the future conduct of the case.

At the conclusion of the conference the convener will prepare a written report for the Magistrate on the outcome of the conference. This report is signed by the convener, the parties and legal representatives and placed on the court file. Practitioners should ensure they receive a copy of the report from the conference convenor.

Communications at a Court Ordered Conference are confidential and can only be used in court proceedings with the consent of all of the parties. If the practitioner wishes to advise the court of the content of communications at the Court Ordered Conference they should first obtain the consent of the relevant departmental officers and the separate representative if one has been appointed.

In the event that subsequent departmental material contains communications from the Court Ordered Conference representations should be made the Department that the affidavit material be withdrawn. In the event the material is not withdrawn then the practitioner should make an application to the court to disregard that material.

G15. Mention following the Court Ordered Conference

The matter will be mentioned again after the conclusion of the court ordered conference. The practitioner should use this court event to obtain orders by consent where this is possible.

In the event that the matter is contested the practitioner should use this mention to obtain directions for the preparation of the matter for trial.

Things to do to prepare for the mention:

1. letter to client to inform of mention date, request their attendance and explain the relevance of this court event

2. prepare a plan for the trial – What are the client's instructions? What evidence is needed to support their application? How long will it take to prepare for trial? What experts are needed?

3. review the current case plan with the client and assess the evidence needed to support the client's case and how to get that evidence before the court

4. ascertain whether the case plan has been filed by the Department

5. ascertain the review date for the current case plan and whether the case plan will still be current at the time of the trial or whether it needs to be reviewed

6. consider whether the matter is ready to proceed to trial

7. consider the likely number of witnesses and the length of trial – include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions

8. the need for expert witnesses and a social assessment report or an update to an existing report

9. speak to proposed Counsel and confirm date availability

10. canvass options for settlement

11. if the matter cannot be resolved request that it be set down for hearing

12. consider whether the matter is complex and should be listed before a specialist Children's Court Magistrate.

At the mention, the practitioner should seek directions for the preparation of the matter and filing dates for each party. The practitioner should seek that the Department file its material first and ensure that sufficient time is allowed for the client to file their material in response.

Immediately after the mention, aid should be sought on behalf of the client for the preparation of material for trial and attendance at the trial.

G16. Write to client advising of date of trial

Once a trial date has been obtained the practitioner should write to the client advising the trial dates and also any relevant timetable for the filing of material. The need for the client to attend and an explanation of any filing dates be provided to the client and confirmed in writing.

G17. Briefing counsel

Having consideration to the funding policy of LAQ, Counsel may be briefed to appear for complex matters.

G18. Departmental preparation for trial

Where matters are proceeding to a contested hearing the Department will usually engage crown law to appear at trial. Where crown law is not available the Department may engage members of the private bar.

Officially Counsel is instructed by the applicant for the child protection order. In practice the matter is usually prepared by the Court Coordinator in the local Child Safety Service Centre in conjunction with the relevant departmental officer in the Court Services Unit. The practitioner should liaise directly with those officers with regard to preparation of the matter for trial.

G19. Evidence and witnesses

Where a matter is contested evidence should be gathered and presented to the court by way of affidavit. Doctors' reports evidencing injuries, previous protection orders, and statements from witnesses may be necessary to support the client's application. Witnesses will need to be organised well in advance and the practitioner should attempt to speak with them prior to the hearing to determine what they will be able to say. Witness' evidence should be provided to the court by way of affidavit and filed and served on the parties. In the case of the Department the practitioner should serve copies of the affidavit material on both the relevant Child Safety Service Centre and also the Court Services Unit.

If the client's affidavit is lengthy the practitioner should prepare the material in draft and forward it to the client for perusal. Clear advice needs to be given to the client about swearing the affidavit and the implications of making false or misleading statements.

Practitioners should be aware of any relevant conditions which may prevent the client from adequately proofing affidavit material e.g. illiteracy, language difficulties or diminished cognitive functioning and the relevant jurat should be used in those circumstances.

If the client is seeking an alternative child protection order to that sought by the Department attention should be given to the development of an appropriate case plan which reflects the order sought by the client.

Practitioners should make endeavors for the Department to provide them with copies of the Departmental file material. The Department maintains both a paper file and an electronic file and practitioners should seek access to the documents contained on both parts of the file.

Where the Department refuses access to the file the practitioner should subpoena it.

G20. Issuing of subpoenas

Any witness who is to receive a subpoena should be given advance notice of the subpoena and should be served as soon as possible. Attempts may be made to accommodate expert witnesses and the timing of their evidence where practical and the court should be made aware of any problems at the earliest opportunity.

G21. Arrangements for court

Ensure appropriate arrangements have been made with the client for their appearance at court. If there are security or safety issues, it may be wise to meet the client at the office and accompany them to the court. In extreme cases the court staff and police may be informed of your concerns.

Check the client understands the procedure for the court attendance and is advised correctly in relation to the need to bring other witnesses or documentation. Allow for sufficient time to confer with your client and with the Department prior to court.

G22. Preparation for trial

When preparing for trial, the practitioner should:

1. ensure an updated grant of aid
2. inform the client in writing of the trial dates, confirming their need to attend along with their witnesses and steps taken in preparation for trial
3. confirm Counsel for the trial – by letter setting out trial dates and fees payable pursuant to Legal Aid Scale of Fees
4. issue Subpoenas - together with conduct monies
5. inspect any material returned under subpoena on behalf of the other parties
6. inform witnesses of trial dates and ensure they have a copy of their affidavits or evidence, that they are available for giving evidence and arrange times for their attendance for the purposes of cross examination to minimise waiting time
7. prepare objections to affidavits and documents to be tendered
8. advise the other parties which of their witnesses are required for cross examination
9. liaise with the other parties/their practitioners for the preparation and filing pursuant to court directions
10. consider whether the matter is an appropriate matter to be dealt with on the papers for e.g. harm is admitted, the appropriate type of order has been agreed and the only issue in dispute is the length of the order and this could be dealt with by way of submissions.

G23. Brief Counsel for trial

The practitioner should retain and brief Counsel as soon as practicable. The brief to Counsel must include all relevant court documentation including any trial plan, copies of any subpoenaed material available [or summary of same if necessary though copies of material should be sought if the matter is progressing to a trial] and copies of all relevant Departmental material.

Instructions to Counsel should set out the trial dates and court in which the proceedings are listed for hearing, the basic premise of the case, list the witnesses to be called by each party and a statement as to the relevance of that evidence and confirmation of fees payable pursuant to Legal Aid Scale of Fees.

G24. Conference with Counsel

The practitioner should consider the appropriateness of conferences with Counsel and arrange conferences with Counsel and the client as early as practicable.

G25. The court process

The practitioner should shield the client from any unnecessary conflict, or even contact with departmental officers if appropriate. The practitioner may negotiate with departmental officers and this may result in either a consent or an expression of a desire to contest. The practitioner should explain the negotiations to the client at all times and ensure that the client's position is not compromised in any way. Practitioners must seek instructions before agreeing to any orders.

The client should be prepared for the trial process including preparation for the giving of evidence and also cross examination.

G26. Attend at the hearing and instructing Counsel

While s105 of the CPA gives the court the ability to dispense with the rules of evidence the hearing of any contested matter should still follow the normal course of litigation. In this regard practitioners should ensure that the Department presents its case first and that during the proceedings objections to evidence are made in the usual way and in accordance with the accepted rules of evidence. The Magistrate can then indicate when the rules are to be dispensed with.

The practitioner should take accurate records of the proceedings including witness names and times of hearing. It is also recommended that during the course of the trial an adequate summary of questions and answers be maintained by the instructing solicitor.

G27. Appeals

In every case the practitioner should consider whether an appeal should be lodged. If the practitioner considers an appeal should be lodged they must discuss this option with the client. If a client wishes to appeal the practitioner should examine the merit and make a determination as to whether grounds of appeal exist.

Practitioners should be aware of the relevant time limits and observe them in all cases.

If the appeal is meritorious the practitioner must assist the client to complete and lodge the Notice of Appeal 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 any appeal can be assessed.

Inhouse practitioners must consult with their coordinator or the Family Law Consultant about the merits of the case before making an application for aid to appeal.

If an appeal is considered appropriate the practitioner should:

1. take instructions from the client
2. advise the client of the appeal process and possible outcomes
3. seek a grant of aid for obtaining an advice on appeal and assist the client in completing the Legal Aid Application Form
4. assist the client to complete and lodge the Notice of Appeal.

G28. Client care at the conclusion of the matter

After the matter is concluded the practitioner should write to the client informing them of the outcome and provide sealed copies of orders made and the reasons for judgment or advising of the expected date of Judgment if known.

Where a child protection order has been made, the practitioner should advise the client and confirm in writing their rights concerning proceedings in QCAT. In this regard the practitioner should provide an indication of which departmental decisions are open to review in that forum i.e.

a. decisions in relation to a supervision matter sated in a child protection order (s78 CPA)

b. decisions about placement of the child (s86(2) CPA)

c. a decision to withhold information from the parents about the child (s86(4) CPA)

d. restrictions on contact between the parent and the child (s87(2) CPA).

The client should also be informed of their right to apply to revoke or vary the order made should their circumstances or the circumstances of their child/children change in the future.

At the conclusion of the matter the practitioner should ensure all accounts are finalised in a timely manner.

Annexures

A. Client Information Sheet

B. Best Practice Guidelines for lawyers working with clients who have experienced domestic and family violence

C. Checklist for Criminal Injury Compensation Matters – Court Hearing

D. Checklist for Criminal Injury Compensation Matters – Direct Ex Gratia application

E. Checklist for Administration of War Veteran's matters

F. Best Practice Guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients

G. Guidelines for working with interpreters

Document Effective: 1 August 2010

Document Sponsor: Coordinator, Preferred Supplier Strategy
Legal Aid Queensland
GPO Box 2449
BRISBANE QLD 4001

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.

Working with clients* who have experienced domestic and family violence

Best practice guidelines for lawyers

Legal Aid QUEENSLAND

July 2007

1. The safety of clients, children & workers is paramount

1.1 Identify if any domestic and family violence protection orders exist and if there have been any breaches. Record these details on the file

Practice points:

- Allocate extra time to investigate domestic and family violence allegations.
- Ask about behaviours rather than using terminology the client may not understand or relate to.

1.2 When seeing a client ask about and document on the file any potential safety or security issues

Practice points:

- Use the risk assessment pro-forma to decide what safety precautions are necessary for the client and yourself.
- Review the risk assessment during the key stages of the court process eg interim hearing, pre-hearing conference , before day one LATs or trial.

1.3 When preparing material for a court hearing ensure all allegations of domestic and family violence are included, where appropriate

Practice points:

- Consider attaching the domestic and family violence order or the application to the affidavit material.

1.4 Include all details of domestic and family violence when applying for legal aid

Practice points:

- Attach a copy of the domestic and family violence order or application. Consider if a Notice of Abuse or Family Violence [Form 4] is needed.

1.5 Take appropriate precautions for the client's safety

Practice points:

- Ensure the client will not see their ex-partner at your office.
- Always ensure there are no identifying documents/files left in view or accessible to the other parties at any time.
- Consider the logistics of getting your client to and from your office and court, and accompany them if necessary.
- Ensure clients use separate exits and arrive/leave at staggered intervals during a family law conference.
- Accompany your client to a conference or meet them at an independent place so they are not waiting to start a conference with their ex-partner.
- Ask for a separate room during a family law conference.
- Do not give out a client's address or that of their relatives or friends without their permission.
- Do not give out refuge contact telephone numbers or street address.
- If it is not safe to call a client at home, ensure this is recorded on the file.
- Let a court know well in advance about arrangements that may need to be made to keep your client safe at the court. Do this in writing if necessary.
- Familiarise yourself with the court safety procedures and protocols.
- If your client threatens the other party's safety or that of their solicitor, consider telephoning the other solicitor and when in doubt contact the Queensland Law Society's Lawcare for expert advice.

1.6 Take appropriate precautions for your own safety

Practice points:

- If you are seeing a client away from the office, arrange to call the office when you arrive and at another time such as when you are leaving.
- If you are working at a Legal Aid Queensland office, know where the distress buttons are in the conference and interview rooms.
- If you are working at a Legal Aid Queensland office and a physical incident occurs, complete a workplace health and safety incident report, notify Legal Aid Queensland and make a file note.
- If a client threatens you, notify Legal Aid Queensland or appropriate authorities or a colleague and make a file note.

2. Violence is a crime whether it occurs in public or in private

2.1 Give clients appropriate information about legal options to address domestic and family violence

Practice points:

- Tell clients domestic and family violence is a crime, whether it happened in public or in private.
- Give clients accurate and realistic information about their options to address the domestic and family violence.
- Make the distinction between the civil and criminal ramifications of a domestic and family violence order and explain this fully to the client.
- Assist the client to make a complaint to the police.
- Be aware of referral options for support services

Refer:

- Tell the client how to apply for a domestic and family violence order under the *Domestic and Family Violence Protection Act 1989* or make a complaint to the police under the Criminal Code 1899.

3. Actively involve clients in assessing their own legal needs and making decisions about their future

3.1 During the initial interview fully inform clients of the legal process

Practice points:

- Send a letter in plain English explaining the process when inviting a client to attend an interview.
- Provide appropriate written material to the client at the initial interview so they have something to take away and read.
- Always let the client make-up their own mind and provide them with enough information to assist them to make-up their own mind.

3.2 Do not put pressure on a client to agree to conditions in a conference if an agreement would jeopardise their safety and continue the domestic and family violence

Practice points:

- Do not pressure the client to make a decision in a conference or when organising a conference.
- Ensure clients understand they have the right not to agree to resolve the matter in a conference.
- Accept the client's decision even if this means there is no resolution.
- Raise all issues if you think it will help.
- Ensure the client has a full understanding of the agreement's terms and implications.
- Reality test agreements to ensure that they are workable. Place agreements in context, ask the client to think of possible scenarios to ensure they fully understand the agreement's possible ramifications.

3.3 When self-assessing a legal aid application, do not grant aid for a conference when there are domestic and family violence allegations

Practice points:

- Legal Aid Queensland's guidelines exclude conferences as an option where domestic and family violence is an issue and "where the power imbalance between the victim and the perpetrator is so great that the victim will be unable to negotiate effectively, even with the assistance of a solicitor".
- Ensure you ask the client about their ability to negotiate when you are discussing applying for aid.

4. It is important to work collaboratively with other services that support clients who have been affected by domestic and family violence

4.1 When giving legal information to clients also provide information about services that could address their other needs and those of their children

Practice points:

- Ensure you know or can find out about appropriate non-legal support and referral services and ensure this information is provided to the client, eg regional domestic and family violence services, refuges, sexual assault services, children's contact centres, Legal Aid Queensland database.

Continued over page...

** Clients are all parties to a dispute.*

Working with clients who have experienced domestic and family violence

Best practice guidelines for lawyers (continued...)

Legal Aid QUEENSLAND

July 2007

- If in doubt, contact a relevant Legal Aid Queensland specialist unit such as Women's Legal Aid, the domestic violence unit, family lawyers and the social work team.

4.2 When preparing a client's case, ensure there is appropriate liaison with the client's support networks

Practice points:

- If a client is seeing a counsellor or health professional, consider asking for a report from them if the client agrees, it would help your case and not breach their privacy.
- Make arrangements for a refuge worker or support worker to sit with the client when they are giving instructions or when they are appearing in court.

5. All clients should be treated with respect

5.1 Do not be judgemental in your response when interviewing clients and hearing their experience of domestic and family violence

Practice points:

- Listen, respond respectfully and behave sensitively when clarifying or asking for further details of alleged abuse or domestic and family violence or cultural practices.

5.2 Make reasonable attempts to locate evidence to support a client's allegations of domestic and family violence when representing a client at court

Practice points:

- Collect appropriate police reports, medical reports and statements from possible witnesses.
- Ensure you know each court's processes.
- When organising specialist reports check the background and experience of the people you engage.

6. Legal Aid Queensland services should be accessible and equitably delivered to all clients affected by domestic and family violence

6.1 When preparing for a conference or a court hearing, ensure cultural issues are addressed

Practice points:

- Do not make assumptions about a client based on their cultural background.
- If relevant, contact established migrant/refugee welfare services for cultural information or for support for a client, such as the Immigrant Women's Support Service (IWSS).
- Use the internet to get current international evidence on the political and social situation in other countries eg country reports.
- Contact established Indigenous welfare services for information about culture and for support for the client.
- Trained interpreters should be offered if you believe language is an issue.
- Legal Aid Queensland will fund interpreters.
- Always check that a client from a non-English-speaking background is comfortable to proceed without an interpreter, even if they have declined one on a previous occasion. Attempt to make the necessary arrangements so the conference can proceed, such as organising a telephone interpreter.
- If possible, use separate interpreters if both parties to a dispute are from non-English-speaking backgrounds, especially during shuttle conferences.
- Try to get an interpreter of the same gender as the client and check whether the client has any preference.
- Try to use the same interpreter every time.
- Allocate extra time in an interview if there will be an interpreter.
- Remember, domestic and family violence has an impact whatever the case involved.
- Where appropriate, try to talk with other people involved in the case such as doctors, health professionals, caseworkers and carers and where necessary apply for aid for a specialist report.

7. Develop & maintain your knowledge of the social context of domestic and family violence including power, control and gender

7.1 Have a knowledge of the relevant sociological, psychological and political perspectives explaining domestic and family violence in the home

Practice points:

- Ensure you are informed about the current theoretical perspectives on domestic and family violence against women and children.
- Attend relevant professional development opportunities to keep your knowledge base current.
- Engage report writers and professionals that have a knowledge of the current sociological, psychological and political perspectives explaining domestic and family violence in the home where there are domestic violence allegations.

Notes:

Annexure C
Section 24 or Section 663B Application

CODE ☐ **COVA** ☐ **Time limit expires:**

Common law time limit:

Action		Date
1	Time limit entered in time limit register	/ /
2	Initial letter enclosing client information sheet including authorities to obtain material for client signature	/ /
3	Check costs letter returned	/ /
4	Check appeal status on conviction	/ /
5 Obtain:	• Transcript of submissions of counsel and sentencing remarks - State Reporting Bureau • DPP documents ie victim impact, medical witness, client's statement other relevant witness statements • Asset searches • Certificate of Conviction	/ /
6	Check time limit, respondent's assets, review file and documents obtained, obtain hospital reports/records and general practitioner reports if appropriate and decide as to specialist reports needed and instructions to doctors re reports	/ /
7	Letter to client advising of material obtained and enclosing medical reports. Request info re respondent's service details, ascertain client needs re: service of respondent if appropriate	/ /
8	Discuss reports with client obtain instructions and prepare documents • Originating application • Applicant's affidavits • File manager's affidavit • Specialists affidavits • Draft outline of submissions	/ /
9	Arrangement for all documents to be sworn	/ /
10	Arrange court date	/ /
11	File documents and arrange for documents to be served on respondent and Affidavit of Service and serve Public Trustee if necessary and letter to client advising of hearing date and advising respondent about to be served with documents	/ /
12	Provide outline of submissions to judge	/ /
13 Attend	hearing	/ /
14	Advise client re outcome	/ /
15	Obtain Transcript and Order	/ /
16	Provide advice to client on appeal if necessary	/ /

Action		Date
17	Update asset information	/ /
18	Letter of Demand to respondent	/ /
19	Commence enforcement proceedings if necessary	/ /
20	If no assets draft JAG application form	/ /
21	Send letter to client confirming outcome, and enclosing copy of Order, JAG application form	/ /
22	Letter to JAG enclosing application and write to client advising application lodged and approximate waiting time	/ /
23	Check acknowledgment letter form JAG received and request status report from JAG as appropriate	/ /
24	Receive cheque from Attorney-General	/ /
25	Advise client cheque received and check current address / whether pickup required and forward payment to client with final letter	/ /
26 Close	file	/ /

Annexure D
Section 33 or Section 663D Application

CODE ☐ **COVA** ☐ **Time limit expires:**

Common law time limit:

Action		Date
1	Time limit entered in time limit register	/ /
2	Initial letter enclosing client information sheet including authorities to obtain material for client signature	/ /
3	Check costs letter returned	/ /
4	Obtain hospital reports/records and general practitioner reports if appropriate and decide as to specialist reports needed and instructions to doctors re reports	/ /
5	Letter to client advising of material obtained and enclosing medical reports	/ /
6	Discuss reports with client obtain instructions and prepare JAG application	/ /
7	Arrangement for JAG application to be signed by client	/ /
8	Letter to JAG enclosing application and containing submissions and comparable cases if necessary Letter to client advising application lodged and approximate waiting time	/ /
9	Check acknowledgment letter form JAG received and request status report from JAG as appropriate	/ /
10	Receive cheque from Attorney-General, advise client of outcome and provide advice about request for reasons and judicial review if appropriate, check current address / whether pickup required and Forward payment to client with final letter	/ /
11	Close file	/ /

Annexure E
Checklist – Administration of war veterans' matters

To be completed by solicitor

Activity	Date
S.37 documents received:	/ /
Copy S.37 documents forwarded to LAQ:	/ /
S.37 documents perused:	/ /
Conferences with client prior to PC1 (first preliminary conference):	
• Telephone conference (time involved:_____)	/ /
• Face to face conference (time involved:_____)	/ /
Attempts to settle and other contacts with DVA prior to PC1:	
	/ /
	/ /
	/ /
	/ /
Statement of issues lodged with AAT (at least 1 day prior to PC1):	/ /
Date of PC1 (LAQ notified of date):	/ /
Date(s) of medical appointments(s):	/ /
Medical reports(s) due:	/ /
Details of other documentation required:	
	/ /
	/ /
	/ /
	/ /
Other required documentation requested (prior to PC1)	/ /
Other required documentation due:	
	/ /
	/ /
	/ /
	/ /
PC2 (Second preliminary conference) arranged:	/ /
Matter considered complex **YES / NO** (please circle)	

Activity	Date
Summary of complex issues:	
	/ /
	/ /
	/ /
	/ /
Conferences with client prior to PC2:	
• Telephone conference (time involved:_____)	/ /
• Face to face conference (time involved:_____)	/ /
Attempts to settle and other contacts with DVA prior to PC2:	
	/ /
	/ /
	/ /
	/ /
Witness statements lodged and served (at least 14 days prior to PC2):	/ /
Experts reports lodged and served (at least 14 days prior to PC2):	/ /
Client Statement of Facts and Contentions lodged and served (prior to PC2):	/ /
Copy client Statement of Facts and Contentions (prior to PC2) forwarded to LAQ	/ /
Received copy Repatriation Commission Statement of Facts and Contentions:	/ /
Copy Repatriation Commission Statement of Facts and Contentions forwarded to LAQ	/ /
Date of PC2:	/ /
Outcome of PC2 (details):	
	/ /
	/ /
	/ /
Likelihood of success (solicitor/counsel must certify in his/her opinion, prospects of success are greater than 50%):	
Details of expected future conduct of matter (eg mediation, hearing):	

Best practice guidelines for lawyers providing legal 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 that 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.

4. Recognise that 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.

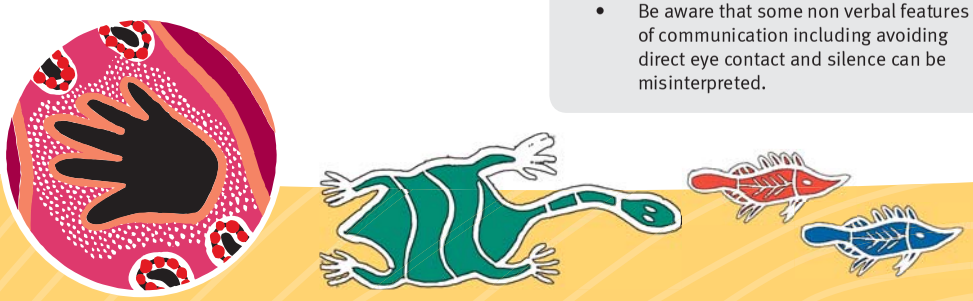
Practice points:

- 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 that 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.



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6. Understand that 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 that 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 these adoptions through Kupai Omasker.

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:

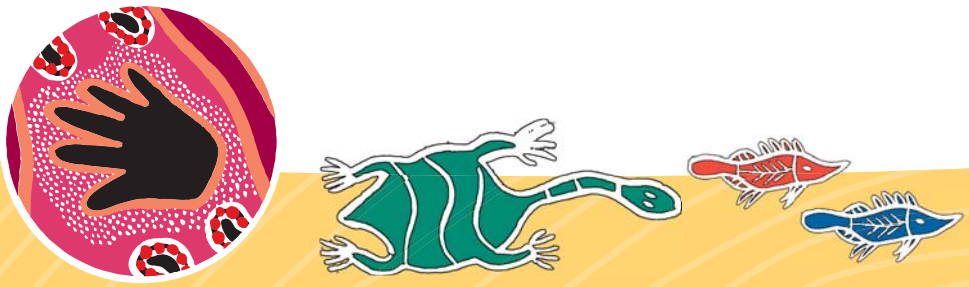
- Be aware of what services and resources are available within the client's community.
- Refer clients to existing services which can be reasonably accessed by the client.

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.



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Annexure G
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) they should be provided with one.
- If a client does not ask for an interpreter, it may be difficult to assess if they need one. 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 professional 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 professional 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, take into consideration factors such as gender, ethnicity and dialect, literacy levels, hearing impairment or other communication difficulties. The client's comfort level 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-professional interpreters should not be used unless the situation is urgent and a professional 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 paraprofessional 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 professional interpreters in regional and rural Queensland is often limited to telephone interpreting through TIS Eastern, though 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.
- Complex interpreting work that may have serious implications for the client should be undertaken by the most qualified interpreter available.

Professional interpreters vs family and friends; bilingual staff as interpreters

- Friends and family members should not be used in the same role as professional 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.
- Communication may be distorted or changed because of:
  - lack of competence in English, particularly English used in a legal context
  - lack of competence in the client's first language
  - lack of interpreting skills
  - bias and lack of impartiality by the family member/friend. In many circumstances however the client may feel more comfortable with a family member or friend present, in addition to the professional interpreter.
- Professional 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 accredited interpreters may assist with communication with clients in certain circumstances. But as the general rule, professional 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 eg "non-professional interpreters may compromise or misinterpret important communication". Staff should advise clients that our policy is to use professional interpreters and emphasise this policy helps everyone involved in the communication process.

Arranging an interpreter

- Professional interpreting services can be accessed either over the phone (solely through TIS) or on-site, where the interpreter is physically present. Audio-visual access through videoconferencing networks is also possible.
- TIS is our translating and interpreting services preferred supplier. To arrange an interpreting service contact:
  - TIS on-site (face-to-face) interpreting. Pre-book by fax on 1300 654 151 with reasonable notice (generally 24 hours notice). Request forms for fax purposes are available from TIS. Follow the links from the multicultural resources page on the LAQ intranet.
  - Or book by phoning TIS on 1300 655 081. After hours access to TIS is through TIS Melbourne.
- TIS – telephone interpreting. Pre-book by fax on 1300 654 151 or by phoning 131 450 immediately. Pre-booked telephone interpreting jobs will incur a charge over and above the basic rate.
- 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 3556 1331 or phone 07 3356 8255 (office hours) or 1800 630 745 (after hours).
  - A list of NAATI accredited interpreters is available through the current NAATI Directory or from the NAATI Regional Officer, Brisbane on 07 3393 1358. The NAATI website address is: www.naati.com.au
  - The International Association of Conference Interpreters (AIIC) Australian members is available on 02 6633 7122.
  - Private interpreting and translating agencies are available through the Yellow Pages under "interpreters".

- Check the NAATI accreditation and qualifications of translators obtained through any source.
- Make your booking by giving 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 are important factors.

Paying for interpreting services

- Legal Aid Queensland is responsible for budgeting for and paying for interpreters. Clients do not have to pay for interpreters.
- A grant of aid for interpreting services can be requested from Legal Aid by either the applicant or the solicitor.
- 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 grants of aid.
- The TIS charging policy and rates are available from the Manager, TIS Eastern on 02 9258 4640.
- 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 an accredited interpreter at a distant site.
- Conference environments, where simultaneous interpreting is required in a number of languages, can be arranged using existing Queensland facilities.

Accountability

- Professionally accredited 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 the Manager, TIS Eastern on 02 9258 4640.

Skilling staff in working with interpreters

- The Queensland Interpreter Card Kit contains simple procedural checklists for working with interpreters and responding to the Queensland Interpreter Card. The kits are available from Legal Aid Queensland's Media and Public Affairs Unit.

Case Management Standards
family law

Legal Aid
QUEENSLAND

Contents

Introduction

These Case Management Standards have been prepared to assist Legal Aid Queensland staff and preferred suppliers who practice in the family law jurisdiction including child protection and domestic violence. They cover the following areas of practice:

- Representing a client at family dispute resolution conference
- Parenting orders and property matters
- Domestic violence matters
- Acting as an Independent Children's Lawyer
- Acting as a Separate Representative – Child Protection
- Party representation – child protection
- Arbitration

They represent the minimum work necessary to be undertaken in representing the client or when acting as Independent Children's Lawyer or a Separate Representative. 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.

For in-house practitioners an extensive precedent package is available. Use of the precedents, where they are appropriate, is required. Reference to relevant precedents is noted throughout the Case Management Standards. The letters identified are not an exhaustive list of documents in the precedent package that may be relevant to a particular file. They are identified to assist the practitioner in their filework and prompt them to use the precedents available.

Throughout these Case Management Standards [CMS], reference is made to each of the Family Court of Australia [Family Court] and the Federal Magistrates Court [FMC] where appropriate and collectively these courts will be referred to as the "Family Law Courts".

These CMS should be read in conjunction with and not in substitution of the Family Law Act [FLAct]; Family Law Rules [FLRules]; Practice Directions & Guidelines and Case Management Guidelines [CMG] of the Family Court of Australia [Family Court] and the *Federal Magistrates Act 1999* [FMAct] and the *Federal Magistrates Court Rules 2001* [FMCRules] which may issue from time to time; and other relevant legislation, civil procedure rules and regulations in relation to all areas of family law practice, including the areas of child protection and domestic violence. Please note that the FMCRules incorporate those designated as FMCRules, the adoption of specified FLRules, pursuant to s43 of the FMAct if the FMCRules are insufficient, the rules made under the FLAct apply with necessary modification so far as they are capable of application and subject to any directions of the FMC, and Rule 1.05 FMCRules specifically provides that "if in a particular case the rules are insufficient or inappropriate, the court may apply the Federal Court Rules or the *Family Law Rules 2004* or the *Family Law Rules 1984*, in whole or in part and modified or dispensed with, as necessary". Where possible we have identified the relevant rules to be applied in both courts.

All notes taken on a file can be subject to administrative access by a client or Right to Information. Appropriate care should be taken when recording information on a file.

Part A - General

A1. Initial interview

The first contact with a client who subsequently obtains a grant of aid to resolve a family dispute is often at a legal advice interview. The practitioner is to explain the legal process and procedure relating to the client's matter. Some client information will be obtained at this interview but there is generally insufficient time to obtain detailed instructions. Clients should be referred to local counselling agencies where appropriate. In property disputes clients should also be advised of availability of LAQ's Property Arbitration Program.

When providing advice to a client in relation to the family law matters, then information as required by the Family Law Act and the Family Law Rules must be provided [sections 12A, 12B, 12C, 12D, 12E and s63DA **,** FLRULE 2.03, 4.13, 4.23, FMCRules apply FLRule Part 2.2]. A Checklist setting out the matters to be addressed in provided in the **Annexure M** - **Advice Checklist**.

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.

Confirmation of this grant of aid should be provided to the other party or parties to proceedings pursuant to s28 of the Legal Aid Queensland Act. This is an ongoing responsibility should the parties to proceedings change.

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. The practitioner is to explain to the client the policy in relation to retrospective contributions and ensure that the client signs and returns the Payment of Costs form prior to commencing work on the file.

A3. Management of the client and file

Following approval for a grant of aid, an initial letter, enclosing a Client Information Sheet - **Annexure A** - should be sent to the client by the practitioner. The client must be informed of their obligations and rights in relation to costs payable for work to be done on behalf of the client and any rights to recovery of costs from another party to proceedings. Special attention should be paid to Rules 19.03 and 19.04 in relation to notification to the client. For the FMCt – refer to Part 21 FMRules.

If the matter is urgent and it is not appropriate to send the initial letter to the client, the Client Information Sheet must be given to the client by the practitioner at the first interview with the client. An appropriate record must appear on the file. Where one exists, the standard letter is used.

The practitioner must communicate regularly with the client. The practitioner should copy and forward to the client relevant substantive correspondence sent or received on behalf of the client. The practitioner must keep on the client's file copies of all filenotes, correspondence sent or received and all documents received or prepared on behalf of the client.

The practitioner must be aware of and comply with the Best Practice Guidelines for lawyers working with clients who have experienced domestic and family violence. A copy of the Best Practice Guidelines is attached as **Annexure F**.

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 P**.

The practitioner must be aware of and comply with the Guidelines for lawyers working with Interpreters. A copy of the guidelines is attached at **Annexure C.**

Where possible the practitioner should consider requesting permission to use out-of-court electronic means to attend, make submissions, give evidence or adduce evidence from a witness which previously have been considered by attendances in person – Part XI Dvn 2 FLAct R5.06 & R5.07, R12.12 & R16.08 FLRules and sections 66 to 73 *Federal Magistrates Act 1999*.[FMAct]

A4. Counsel

When applicable, briefs to Counsel must contain the following:

a. A logical and chronological index

b. Clear Instructions to Counsel confirming the date of the court event, a summary of the issues in dispute, a list of each parties witnesses and confirmation of the client's/independent children's lawyer's/separate representative's instructions.

c. Copy of all relevant material – including court documentation, filenotes, witness statements and correspondence

d. The brief should be marked "Legal Aid Brief" and include details of the grant of aid available for Counsel if the client is represented by an in-house practitioner, or the LAQ proforma invoice if the client is represented by a preferred supplier.

A5. Completion of matter

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

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

For in-house matters that are dealt with as Magellan matters or Less Adversarial Proceedings, confirmation of the conclusion of the matter should be provided to Grants as part of the finalisation of the file.

A6. 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.

A7. Appeal

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

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

and all time limits must be observed.

A8. Checklist

A Family Law Practice case management checklist is attached as **Annexure B** for use by the practitioner and placement on the inside of the file. This checklist should be used for all in-house files and completed at each relevant stage.

Part B – Case Management Standards specific to representing client at a Legal Aid Family Dispute Resolution Conference

B1. Initial interview

Note: Client will have completed a Client Conference Assessment Sheet possibly PRIOR to the solicitor having an initial interview with the client. The initial interview with the client must be in person unless extenuating circumstances make an interview in person impracticable, such as illness or distance. A preliminary discussion with the client over the telephone is permitted where the client is reluctant to attend in person or where initial information can be reasonably assessed over the phone to determine if a matter should go to a conference. Care should be taken if this approach is adopted. Often eye contact and body language will be important in assessing a client's vulnerability and needs. If initial information is obtained over the telephone, a follow-up in person interview must take place prior to the conference date.

The practitioner conducting the initial interview with the client must be an admitted solicitor and the practitioner is to:

a. Obtain full particulars of the nature of the dispute, the history of the marriage/relationship, current arrangements for the children and matrimonial property. **Annexure E** is a client instruction checklist;

b. Obtain instructions as to the reasons for the breakdown of the relationship/marriage and whether there is any family violence and if so, is there a Protection Order in force;

c. Consider whether the matter falls within the exceptions to compulsory family dispute resolution as provided in s60I(9) of the FLAct and, if so, seek appropriate funding for litigation;

d. If the matter does not fall within the exceptions to compulsory family dispute resolution as provided in s60I(9) of the FLAct and, after obtaining the appropriate grant of aid (F1A grant), complete the solicitor conference assessment sheet at **Annexure G**, and return it to Legal Aid Dispute Resolution Services no later than 48 hours before the start of the conference;

e. Explain Legal Aid Family Dispute Resolution Conference procedure, the aim of conferencing, the role of the Family Dispute Resolution Practitioner(s) and qualifications, and the consequences of refusing an invitation to attend dispute resolution;

f. Explain the Solicitor's role and the client's role at the family dispute resolution conference;

g. Explain the Confidentiality provisions and expected conduct of the parties at the family dispute resolution conference;

h. Request copies of any court documentation relevant to the matter (see **Annexure D - List of Supporting Documents)**;

i. Confirm whether the client is willing to participate in the family dispute resolution conference despite any history of family violence. Determine if the client is willing to be in the same room as the other party or if the family dispute resolution conference be held in separate rooms. Be sympathetic to the emotions and concerns that the client may have;

j. If the principal dispute relates to parenting orders:

    1. check with the client that property settlement matters have been finalised or are not an issue. Also check what the situation is with regard to child support and whether it is an underlying issue affecting the parties' attitudes to parenting orders. If these are relevant matters, a further advice session to discuss these matters with the client should be arranged as soon as possible and all relevant time limitations should be discussed with the client;

    2. discuss a detailed proposal to be put to the other party and in doing so provide advice in relation to:

        i. generally in relation to s60B, s60CA, s60CC and s61DA and s64B. Further, the client must be advised of consequences of an order relating to pursuant to s65DAA, s65DAC and s65DAE (see **Annexure N**)

        ii. the obligations created by parenting orders pursuant to s65M, s65N, s65NA and s65P

        iii. the option of entering into a parenting plan pursuant to s63DA, where to get assistance in preparing a parenting plan and what matters may be dealt with in the parenting plan pursuant to s63C.

k. If the principal dispute concerns Property Settlement:

1. check that parenting arrangements, including child support, are satisfactory or whether these also need to be discussed at the family dispute resolution conference. If there is a very high level of dispute in all areas and all the issues are complex, two separate dispute resolution conferences may need to be held, one for parenting arrangements and the other to finalise property settlement issues. A further advice session to discuss these other matter with the client may be necessary and all relevant time limitations should be discussed with the client;

2. discuss the availability of supporting documents with the client and provide them with a list of documents to produce with the Property Preparation Form before the dispute resolution conference. If the parties own real estate, the client should obtain at least one and preferably three Market Appraisals in writing of the property or properties to attach to the Property Preparation Form (see **Annexure R)** for exchange with the other party before the dispute resolution conference;

3. advise the client generally in relation to s79(4) and s75(2) of the FLAct and draw up a proposal.

Note: **INSTITUTING PROCEEDINGS AND TIME LIMITATIONS -** s44 FL Act– 12 month time limitation period applies for certain types of applications.

Note: In **ALL** matters, the Solicitor Conference Assessment Sheet **MUST** be returned to the Conference Organiser no later than 48 hours **BEFORE** the start date for the conference. In **PROPERTY** matters the Family Dispute Resolution Conference – Preparation Form (Property) **MUST** also be returned to the Conference Organiser with the Solicitor Conference Assessment Sheet no later than 48 hours **BEFORE** the start date for the family dispute resolution conference.

B2. Negotiation

In order to narrow or define the issues, the practitioner may write to the other party's Solicitor, if known, (or the other party if he/she is not represented) with the client's proposals and concerns in accordance with the instructions given at the initial interview. In the case of property settlement, the letter should also contain a request to produce relevant documents at the family dispute resolution conference, and list the client's estimate of the value of each separate item of property.

B3. Attending the family dispute resolution conference

The following action is required for a family dispute resolution conference:

a. Arrange for the client to attend for a brief interview for 15 to 30 minutes prior to the time scheduled for the family dispute resolution conference in order to bring the practitioner up to date with any recent developments between the parties or with regard to the children, to confirm the issues and concerns of the client and the Confidentiality provisions, and remind the client of the family dispute resolution conference procedure. If concerns have been raised in relation to family violence or there are other safety concerns then the practitioner should accompany their client to the conference venue rather than arrange to meet the client at the conference venue;

If the family dispute resolution conference is not to proceed then the client needs to be informed in writing.

b. During the family dispute resolution conference the practitioner should:

1. Allow the client to do most of the talking (some clients will request the practitioner's assistance and may find speaking for themselves too difficult. You should encourage your client where possible to speak for themselves and prompt them if they forget to raise any relevant issues);

2. Assist where necessary to summarise the client's concerns and proposals or supply necessary details omitted by the client;

3. Ask for a private meeting if the client becomes distressed or otherwise requires legal advice;

4. If the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted;

5. At private meetings during the family dispute resolution conference, carefully explain options and proposals discussed during the family dispute resolution conference to the client and give the appropriate legal advice in relation to those options and proposals. Legal Aid implications and consequences of agreement or failure to reach agreement should also be discussed. The client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement. Reality test all proposals for agreement with the client;

6. Advise the client in relation to the use and effect of a parenting plan and/or court orders.

7. Ensure the client is aware that information given to the Family Dispute Resolution Practitioner may be given to the other party unless it is clearly explained to the Family Dispute Resolution Practitioner that the information is not to be disclosed.

8. Ensure that any agreement reached is explained in detail to the client, the client understands the practical implications of the agreement and the agreement is fully understood by the client.

Note: While a practitioner may prepare a draft proposed agreement based on their client's instructions, this draft is not to be used at the commencement of the family dispute resolution conference to limit the process. All parties to the family dispute resolution conference are to be given the opportunity to raise their concerns and issues and explore options for resolution. Any draft is only to be used at the end of the family dispute resolution conference to assist in preparing the written agreement incorporating the terms agreed between the parties on the day.

B4. Confirm outcome with client

If an agreement was reached by the parties but it is not intended to file Consent Orders, the practitioner is to write a letter to the client confirming the agreement and enclosing a typed copy of the agreement.

If an agreement was reached and it is intended to file Consent Orders, the practitioner is to write a letter to the client confirming this and enclosing the typed proposed Consent Orders and other relevant court – see **B5** below.

If no agreement is reached, confirm this in writing with the client and provide to the client advice as to their options including options for further mediation or counselling services.

B5. Consent Orders

If a written agreement is reached at the family dispute resolution conference with the intention of filing Consent Orders in court, aid is granted for the preparation of the orders unless advised otherwise by Legal Aid Queensland (this is part of the F1A grant of aid). A final interview with the client is required to check and sign the Consent Orders. If this is not possible, then a final letter of advice should be sent to the client enclosing the Consent Orders for signature. Refer to Part 10.4 of the FLRules in relation to Consent Orders.

Part C – Case Management Standards specific to parenting orders and property settlement

C1. Letter of introduction

The practitioner is to forward a letter to the client requesting an appointment be made and enclosing the instruction check list for completion by the client prior to interview - see **Annexure E.**

C2. Initial interview with client

For property matters, the practitioner should advise the client generally in relation to s72 and s79(4) of the FLAct.

For parenting issues, the practitioner should advise the client generally concerning sections of the FLAct:

s60B – objects and principles

s60CA – best interests are paramount consideration

s60CC, s61F – factors used to determine best interests

s60I & s60J – requirements for attending family dispute resolution services before court proceedings are commenced [if applicable] (see separate section – C4.)

s61DA, s65DAA, s65DAC and s65DAE – the presumption of equal shared parental responsibility and the consequences of shared or equal shared parental responsibility orders

s63DA – the option of the use of parenting plans rather than court orders (see separate section – C3.)

s65M – s65P – the general obligations created by parenting orders

In addition, unless the practitioner has reasonable grounds to believe that the client already has been given documents containing the following information, the practitioner is required to provide to the client the information relating to:

1. non-court based family services and court proceedings and services prescribed by s12B

2. services available to help with a reconciliation between the parties to a marriage prescribed by s12C [note this does not have to be provided if there is no reasonable possibility of a reconciliation]

3. family counseling services available to assist the parties and the child or children to adjust to the consequences of Part VII orders prescribed by s12D

The practitioner should discuss with the client various options for resolution or determination and advise as to:

- mediation including family dispute resolution services offered by Legal Aid Queensland
- counselling
- arbitration (if property dispute)
- pre-action procedures [PAPs] R1.05 & Sch 1 FLRules – Checklist – **Annexures H and I** (Note these procedures must be complied with prior to the filing of any application in the Family Court of Australia. Some matters may be exempt from compliance.)
- s60I and s60J apply to almost all proceedings commenced under the FLAct from 1 July 2007 – the requirements for attending family dispute resolution services should be fully discussed with the client.
- duty of disclosure – Chp 13 FLRules and Part 14 Division 14.2 Obligation to Disclose FMCRules
- any family violence order that is needed to be filed
- the making of an offer to settle – s117C FLAct, Part 10.01 FLRules
- confirm the client's understanding of cost implications as far as Legal Aid is concerned and their rights and obligations under the FLAct and FLRules – Chp 19
- the appropriate court in which to commence proceedings.

Consideration should be given to advising the client about whether an appointment of an Independent Children's Lawyer is likely should court proceedings be commenced. Give consideration to the facts of the case and whether they warrant such an order – RE: K (1994) FLC 92-461 and s68L & s68LA FLAct and Rule 8.02 FLRules. The role and responsibilities of the Independent Children's Lawyer must be explained to the client and the obligations of the client must be discussed.

Instructions need to be taken to approach the other party, if this has not already occurred, to attempt to resolve the matter.

The practitioner takes instructions to prepare the court application and supporting material. [Chps 2, 4 and 5 FLRules or Part 4 FMCRules].

C3. Parenting plans

The FLAct encourages parents to make use of parenting plans to document agreements about parenting arrangements, such as with whom a child is to live, the time a child is to spend with another person and allocation of parental responsibility. Parenting plans:

- must be in writing, made between the parents of a child, signed by the parents, and dated;
- must be made free from any threat, duress or coercion;
- are not required to be registered (Prior to 1 July 2006 a parenting plan did not create a legal obligation unless registered);
- are not enforceable BUT:

    1. a parenting order is subject to a parenting plan which is entered into subsequently by the child's parents and agreed to in writing by any other person to whom the parenting order (other than the child) applies;
    2. the effect of this is that if a contravention of a parenting order is alleged, it will be a sufficient defence to show that the conduct was permitted under a subsequent parenting plan;
    3. the court can only in exceptional circumstances (such as a need to protect the child from harm or likely use of coercion or duress to enter into a parenting plan), order that a parenting order may only be varied by a subsequent order of the court and not a parenting plan.

Parents will be encouraged, but not required, to obtain legal advice before entering into a parenting plan.

Grants officers will need to obtain copies/details not only of any parenting orders, but also of any parenting plans, when considering applications for aid for interim hearings. They will also need to consider if the relevant dispute resolution requirements have been complied with.

C4. Compulsory dispute resolution

The introduction of compulsory family dispute resolution before filing applications for parenting orders has been phased in over time in line with the establishment of support services such as Family Relationship Centres. The dispute resolution phases :

- Phase 1 – From 1 July 2006 to 30 June 2007 –

  Parents encouraged to attend dispute resolution with the aim of making a genuine effort to settle their parenting dispute. The current Family Court pre-action procedures (PAPS) set out in the Family Law Rules will apply and will also be extended to other courts exercising family law jurisdiction, such as the Federal Magistrates Court.

- Phase 2 – Mid 2007 to 30 June 2008 –

  Applies to applications for parenting orders where the parties have not previously made an application for a parenting order (therefore new parenting matters). A court will be unable to hear an application for a parenting order unless the applicant has filed a certificate by an accredited family dispute resolution practitioner (FDRP) about attending dispute resolution services. There are five different types of certificates that can be issued by a FDRP – that a person did not attend because they failed to attend or the other party failed to attend; that a conference was not arranged because it would not be appropriate to conduct the service; that a person did attend and all parties made a genuine effort to resolve the issues, that a person did attend but they or the other parties did not make a genuine effort to resolve the issue, and that the conference was commenced but it was terminated by the FDRP as it would not be appropriate to conduct the same.

- Phase 3 – 1 July 2008 onwards –

  Phase 2 will apply to all parenting matters.

Practitioners should be aware that under Schedule 7A of the FLRegulations, family dispute resolution practitioners (FDRPs) have a discretion to give, or not to give, their surname on a certificate and to sign, or not to sign, a certificate.

Some matters are not required to have the certificate before an application is made. This are matters where:

1. the court is satisfied on reasonable grounds there has been abuse of the child, there is risk of such abuse, there has been family violence by one of the parties or there is a risk of such family violence;

2. the application is for contravention, made within 12 months of the court order alleged to be contravened, is made in relation to a particular issue and there are reasonable grounds to believe the alleged contravenor show a serious disregard for their obligations under the orders.

(Note – The current Family Court PAPS set out in the FLRules should continue to apply to property proceedings whenever commenced in the Family Court. The PAPS do not appear to have been extended to property proceedings commenced in the Federal Magistrates Court.)

Before filing – reasonable and genuine attempts at settlement must be made by the client – R5.03 FLRules [note the exceptions to this].

C5. Prepare documentation

Family Court

- Application for Final Orders Initiating Application [as at 16/3/2007 this is currently being trialed by the Family Law Courts] – refer to Chps 2 & 4 FLRules

- Application in a Case or Initiating application (interim/procedural/ancillary/ interlocutory or incidental order) – refer to Chps 2 and 5 FLRules.

- Affidavit – setting out evidence supporting the Application in a Case or for trial, the final orders sought.

- Consider if Notice of Abuse or Family Violence is required – Form 4 –. Consider s60K & s67Z FLAct & Part 2.3 FLRules

- Remember to give client relevant brochures – Part 2.2 FLRules for details s12F FLAct

- Consider who must be a party to the proceedings – Chp 6 FLRules and Part 11 FMCRules

Federal Magistrates Court

- Initiating Application [as at 16/3/2007 this is currently being trialed by the Family Law Courts, (final and if required interim/procedural/ancillary/interlocutory or incidental order) Part 4 FMCRules

- Affidavit – setting out evidence supporting Application

- Consider if Notice of Abuse or Family Violence is required – Form 4 – Consider s60K & s67Z FLAct

For documents to be filed refer to Chp 2 FLRules – Tables 2.1 and 2.2; DVOs [s60CF & R2.05]

The practitioner should consider any applications that may need to be made to preserve property or in the case of children's matters, to secure the client's position in relation to children's matters and obtains instructions to collect appropriate evidence to support such application. The practitioner should also consider whether subpoenas should issue and material made available in relation to the application in a case – In the FCt see Chp 15 – R15.21 FLRules for the limitation on the number of subpoenas allowed and Part 15.3 FLRules generally in relation to subpoenas. In the FMC refer to Part 15, Division 15.3 FMCRules, special note is also made to the Notice to Practitioners Brisbane Registry issued by the FMC on 31 October 2005. **Annexures J and O** provides some further assistance.

If the documentation is lengthy and includes an application for interim orders, the practitioner should prepare it in draft and forward it to the client for perusal with a letter requesting that they arrange a further appointment for signature and advise of any changes at that appointment. Clear advice needs to be given to the client about swearing the affidavit and the implications of making false or misleading statements. [s117AB FLAct; Part 15.2 FLRules & Part 15 Division 15.4 FMCRules – Affidavits].

When taking instructions and preparing the client's material regards should be had when parenting orders are being sought to the matters specified in **Annexure N.**

Special note: should also be made of provisions of s117AB – if the court is satisfied that a party knowingly made a false allegation or statement in the proceedings, the court must order that party to pay some or all of the costs of another party, or other parties, to the proceedings.

Attention should be given to the development of a case plan which will need to be reviewed with the client from time to time throughout the matter.

C6. Costs

There is an obligation to provide to the court and to each party a written statement of the actual costs incurred up to and including the trial. R19.04 (4) FLRules. This is a Rule not often enforced by the FCt.

Independent Children's Lawyers (ICLs) need to be aware of the rules in the FCt and the FMC in relation to costs. FLRules Chp 19 and FMCRules Chp 1 Part 21.

If the matter is one in which costs are an issue, then strict compliance with the rules in relation to costs may be essential to obtaining an appropriate court order.

C7. Filing the documentation at court

When filing the application and supporting documents in the Family Law Courts, the practitioner should include a letter to the Registry requesting waiver of fees on the basis that the client is legally aided. A copy of the letter from LAQ confirming the grant of aid can be downloaded and printed via e-lodge.

NOTE: As of 1 July 2010, waivers do not exist in relation to an application for consent orders.

In property proceedings – once filed, reference should be had to Rules 12.02 FLRules in relation to documentation that must be exchanged prior to the first court date. Reference should also be made to the disclosure requirements in the FMC – Part 14 FMCRules.

There is yet to be provided any clear demarcation tools to determine what matters should be filed in which of the Family Law Courts. Magellan matters fall into a separate category and they discussed later in these standards. For all other matters, both courts deal with complex matters but it would seem that if a matter is likely to require an extended forensic examination of either facts or the law or the trial of the matter is likely to be extended beyond 2 to 3 days, the proceedings should be in the Family Court of Australia. These may not be apparent until the proceedings are commenced and a practitioner should be mindful that a particular matter may need to be transferred to the appropriate court at some point during the course of the proceedings.

C8. Write to client advising of date of hearing

Once the application is filed, the practitioner advises the client of the hearing date and provides an understanding of the next step involved in the process i.e. Counselling, Case Assessment Conference, Procedural Hearing, Interim Hearing, Conciliation Conference, Day 1 of Trial [Dvn 12A] for the Family Court or Trial [Family Court or FMC] and the need for the client's attendance [Chps 12 FLRules, generally a client should attend each Ct event unless excused FMC]. This information can be provided by letter or by arranging a meeting with the client. The event of course, is subject to the events that exist in the court in which the matter is listed.

The client must be advised in writing of the date for any and all of the following (as appropriate):

1. the hearing to determine interim issues
2. a Procedural Hearing/Mention
3. Case Assessment Conference

4. Conciliation Conference
5. Day 1 – Less Adversarial Proceedings [Children's Cases Program]
6. Day 2 – Less Adversarial Proceedings [Children's Cases Program]
7. Trial
8. Appeal listings (as they may arise).

The need for the client to attend and an explanation of the purpose of each of these court events must be provided to the client and confirmed in writing. At all possible and appropriate opportunities, the client should be reminded of the benefits and availability of counselling, mediation and other primary dispute resolution methods to assist in the resolution of the dispute.

C9. Before the Interim Hearing Date

Once the court documents have been filed they need to be served on all parties. In the Family Court service of all relevant documents and brochures is required pursuant to Chps 2 & 7 FLRules. Serve all parties – Chp 6 FLRules. In the FMC – refer to Part 6 of the FMCRules.

For applications without notice in the FCt – refer to Part 5.3 FLRules.

For urgent applications in the FMC – refer to Part 5 FMCRules.

For applications relating to Maintenance, Cross-Vesting, Medical Procedures, Child Support, Nullity and Validity of Marriage or Divorce/Annulment and Passports – Refer to Part 4.2 FLRules for matters in the FCt. For such matters in the FMC refer to general provisions for applications – Part 10 How to conduct proceedings and Rules 4.08 to 4.10 from the FLRules.

When acting for the Respondent – the same processes apply but reference should be had to Chp 9 FLRules when dealing with FCt matters. In the FMC there is no distinction between applicants and respondents.

It is possible to adjourn the hearing administratively and this can be done by all parties writing to the court requesting the adjournment Part 12.5 FLRules; Rule 10.02 FMCRules – Adjournment of First Court Date.

Note: Care should always be taken when writing to the court that all parties are copied into the correspondence and this is apparent on the face of the correspondence. Direct contact with a Judge or Federal Magistrate is not appropriate and all correspondence should be to the Duty Registrar, the Registrar, or the Associate of the relevant judicial officer.

C10. Hearing of interim issues

The client must be in attendance at court unless there are special circumstances and these must be set out in an affidavit to be provided to court. Attendance can be by electronic means – (Family Court R5.06 FLRules & FMC – s67 FMAct).).

On the day of the hearing, ensure attendance at the Callover (if applicable). At the callover, or if asked by the associate, a general overview of the matter is given and an estimate of the time the matter will need to be heard.

At the commencement of the hearing, the court will need to be advised of the material upon which the client intends to rely to support their application. Submissions are made to the court setting out why the orders sought should be made and reference should be made to the relevant evidence supporting those submissions. Reference should be made to relevant sections of the FLAct, the relevant procedural rules and appropriate case law. In particular the case of **Goode & Goode [2006] FamCA 1346** needs to be considered when preparing submissions for interim hearings.

When considering submissions, regard should be had to the matter referred to in **Annexure N.**

It is good practice to have a set of draft orders for the court to consider. Some judicial officers will insist upon this being done. They must be drafted pursuant the client's instructions and using the terminology required by the FLAct.

At the conclusion of the Interim Hearing, directions may be made by either court for a final hearing and a practitioner should be ready to discuss the length of trial, the number of witnesses and the nature of the evidence to be called to establish a client's case and generally the terms of any directions needed to progress a matter to final hearing.

Following the Interim Hearing advise the client in writing of the outcome of the hearing and their rights and obligations as a result of the orders made by court. Consider and provide advice in relation to any possible review or appeal of the decision. This advice should confirm in writing to the client the outcome of the hearing and provide in due course a sealed copy of any orders made. Inform the client of the next court event and the need for the client to attend. Review the case plan for the matter with the client.

Note Chp 10 CMG – FCt and Part 10 FMCRules

C11. Prior to each further court event

Prior to each court event the practitioner:

1. obtains an appropriate grant of aid to attend

2. considers the possibility of settlement prior to the court event and the filing of consent orders

3. advises the client as to costs pursuant to Chp 19 FLRules/Part 21 – Costs FMCRules

4. obtains from the client all relevant documentation to be exchanged pursuant to Part 12.2 FLRules for each court event in the FCt / Part 14 – Disclosure FMCRules.

5. Considers any necessary adjournment – Part 12.5 FLRules.

C12. Case Assessment Conference [CAC]

At the CAC [FCt] the practitioner advises the court of any prospects of settlement and assists in making recommendations for the future conduct of the case. Review the case plan for the matter with the client - Rule 12.03 FLRules.

C13. Procedural Hearing/Mention

At the Procedural Hearing, the practitioner advises the court fully of all matters relevant to the procedural orders needed in the matter, details of agreed issues, assessing prospects of

settlement and negotiating resolution of the matter and identifies all matters relevant to fulfilling the Main Purpose of the FLRules. This is appropriate practice in both the FCt Rule 12.04 FLRules and the FMC – Rule 10.01 FMCRules. Assistance is also provided to the court in determining the next appropriate court event.

Directions may be made by either court for a final hearing and a practitioner should be ready to discuss the length of trial, the number of witnesses and the nature of the evidence to be called to establish a client's case and generally the terms of any directions needed to progress a matter to final hearing. Matters to consider are:

- Is the matter ready for trial? Do other things need to occur or does time need to be allowed to have steps undertaken or progress to be made in relation to aspects of the matter e.g. counselling, completion of course, valuations, reports etc?
- The number of witnesses needed and why their evidence is relevant
- The length of trial – include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions
- The need for expert witnesses and a conference of experts if appropriate
- The need for a Family Report [if appropriate]
- Speaking to proposed Counsel and confirming availability [if possible].

The determination of directions to prepare a matter for trial provides a further opportunity for settlement negotiations. The practitioner must ensure that there is a grant of aid to attend this court event in the FCt. Directions will be given for the preparation of the matter for trial – Rule 12.07 FLRules and Part 10 FMCRules.

Immediately after the court event, when directions for trial are made, aid should be sought for the preparation of material for trial and attendance at any other court event prior to the final hearing. Practitioners should assess the evidence needed to assist the court in determining the issues in dispute keeping in mind the legislative framework that applies. Consideration should also be given to how to adduce that evidence before the court pursuant to the rules of evidence [as far as they apply].

C14. Child abuse cases

Pursuant to s60K FLAct when a document filed alleges abuse or risk of abuse of a child the court must consider interim or procedural orders to enable the matter to be dealt with expeditiously and to protect the child and the parties. In both the FCt and the FMC Part 2.3 of the FLRules applies and provides a Form 4 must be filed and served. The Form 4 sets out the allegations of abuse or risk of abuse.

When these matters are raised in the material, then at a hearing for the determination of interim issues, the CAC, a procedural hearing or at any other time, consideration should be given to the appointment of Independent Children's Lawyer s68L, RE: K (1994) FLC 92-461, the intervention of the Department of Communities (Child Safety Services) - s91B, and order for the production of documents or information from a prescribed State Authority – s69ZW and any other appropriate interim order required. The practitioner should also consider the need and suitability for further counselling in the matter.

Consideration is needed as to whether a matter should be referred to the Magellan Judge for inclusion in the list of cases to be determined using the Magellan case management system in the FCt. These cases are considered at **C20.** If the matter is in the FMC, consideration should be given to transferring the matter to the FCt if is considered a candidate for allocation to Magellan.

C15. Family violence cases

Pursuant to s60K when a document filed alleges family violence or risk of family violence by one party the court must consider interim or procedural orders to enable the matter to be dealt with expeditiously and to protect the parties and the children. In both the FCt and the FMC Part 2.3 of the FLRules applies and provides for a Form 4 to be filed and served. The Form 4 sets out the allegations of family violence or risk of family violence.

C16. Matters to be considered prior to conciliation conferences – property matters

In property matters, the practitioner ensures all required documentation is exchanged 7 days prior to the Conciliation Conference. For details refer to Rule 12.05 FLRules and the Conciliation Conference Document.

At the FMC the court will make orders/directions for the preparation of the matter for a conciliation conference. Rule 10.05 FMCRules.

Both courts provide extensive directions and requirements for the preparation, disclosure and exchange of information. These directions must be complied with and fully explained to the client.

C17. Conciliation conferences

Attendance by the client is required. FLRules – rule 12.11 and FMCRules – Rule 10.05(3). A letter should be sent to the client informing them of the date of the conciliation conference, confirming their attendance is required and setting up a meeting prior to that date to prepare.

The practitioner, with the client, should also consider all options for settlement and make a genuine effort to reach agreement about relevant matters in issue. FLRules 12.06 and FMCRules 10.05. Always consider the filing of an offer. In the FCt Rule 10.06 FLRules provides that an offer must be made within 28 days after the conciliation conference or such further time as ordered.

C18. Preparation for trial in the FMC

Once directions are made for the preparation of a matter for trial in the FMC, a request for aid must be made on behalf of the client to comply with the directions. The client should be informed of the result of that request for aid.

The filing of any material to be relied upon at trial **must** be filed in compliance with court's directions. When preparing the material, give consideration to the matters referred to in **Annexure N** in relation to parenting arrangements, and for property proceedings those matters referred to in s72 and s79(4) of the Family Law Act.

Are the orders sought in the application/response consistent with your instructions? Do you need to file an amended application?

Affidavits – refer to FMCRules Part 15, Division 15.4

Subpoenas – refer to Part 15, Division 15.3 FMCRules. Special note is also made to the Notice to Practitioners Brisbane Registry issued by the FMC on 31 October 2005. There are limitations on the use of subpoenae.

Service of material

Once the court documents have been filed they need to be served on all parties. In the FMC – refer to Part 6 of the FMCRules.

C19. LAT (Less Adversarial Trials) and Docket System in the Family Court

The less adversarial system of legal procedures prescribed under Division 12A of the Family Law Act and provided for in Chp 16A of the FLRules, will apply in both the courts to:

- All parenting, child maintenance, and parentage proceedings filed after 1 July 2006 (but not Hague convention, contempt or contravention applications, applications relating to medical procedures, child support applications, or applications relating to a passport);

- All proceedings to which the parties consent to the matter being determined in a less adversarial manner (and the court grants leave) – for example, parenting proceedings commenced before 1 July 2006 and property proceedings whenever commenced.

The FMC will incorporate the less adversarial procedures into the court's existing case management processes (in particular the docket system).

The Family Court has established LAT as the system of case management for matters in the less adversarial stream. Matters not in that stream will be case managed in the usual manner being the Case Management system implemented in the Family Court in late 2001. With the introduction of the Docket system in the Family Court, there is very little difference between LAT and non-LAT matters. The only difference appears to be that only in LAT matters are parties required to file questionnaires, be sworn to give evidence on Day 1 and will a family consultant have been automatically appointed to a matter prior to Day 1.Parenting matters where there are serious allegations of abuse will still be dealt with in the Magellan stream in the Family Court. See separate section on Magellan Cases and Trials.

If the parties have both property and children's proceedings before the court, the parenting proceedings may be a LAT matter either because the proceedings were commenced after 1 July 2006 or because the parties have consented to those proceedings being dealt with in the program. If the parties do not consent to the property proceedings being dealt with in the program, the court may have to consider two trials.

Interim applications will be determined in the usual manner before a matter progresses to Day 1 of LAT or Day 1 in a Judges docket. It should be noted the Family Court intends to abolish a regular Duty List process. The Family Court is expected to focus on complex matters for hearing, urgent interim applications and those matters within their exclusive jurisdiction.

Some features of LAT matters:

- The hearing will commence on the first day of the program. The proceedings will be recorded. Pursuant to R16A.10 FLRules – the parties and the family consultant must be sworn. [note R1.12 FLRules, the Ct may dispense with compliance of any of the rules.]

- Proceedings are less adversarial, less formal and rules kept to a minimum.
- Greater flexibility – court able to respond to specific needs of the case as they arise, the matter may be listed for mention when necessary.
- Less time in court – less documents, fewer witnesses.
- Parties will see mostly the same judge and family consultant.
- "Meetings" or appearances will be by telephone when appropriate.
- Case is judge managed – judge decides the issues to be determined, the evidence to be called, the way the evidence is received, the subpoenas to be issued, and the manner in which the hearing is conducted.
- Technical rules of evidence will usually not apply except when the judge decides they should apply to particular issues for special reasons.

Pathway for LAT Matters

The matters which are to progress to the LAT may be adjourned at the conclusion of a case assessment conference or an interim hearing [as may be appropriate depending on the application] to a date to be fixed for the first day of the less adversarial trial.

Day One (commencement of hearing) – The parties will have completed a questionnaire [Rule 16A.07] which is provided to the Judge. The Family Consultant will be in court on the first day to speak with the parties, provide information to the judge, assist the parties to resolve the matter and assist the Judge and the parties to identify the issues if the matter does not resolve. The Family Consultant may have seen the parties and the children prior the first day in preparation of Day 1. Parties may speak directly to the Judge even though represented. The parties will be sworn in if they are to speak for themselves. All exchanges form part of the evidence and are recorded. The issues are identified and documented. The Judge issues directions about what evidence he/she requires. The Judge may order that a Family Report be prepared by the Family Consultant [orders are usually made pursuant to s11F and s62G FLAct.]. No party may file or serve a document without leave first obtained from the Judge. Anything said or done by the parties during the hearing process in the course of receiving assistance from the Family Consultant is not privileged.

It is not envisaged that Counsel will be briefed to appear at this stage.

It is very important the client is properly prepared to speak to the Judge directly if the client elects to do so.

Day Two – Family Report if any, may be available. Cross-examination of witnesses including Family Consultant may occur. The Judge may determine discrete issues. Further directions for final stage if the matter does not resolve.

Counsel may be required at this stage, depending upon the matters to be determined at this stage. Discrete issues may have to be set down for hearing at Stage One. Careful consideration of the issues and purpose of each stage needs to be undertaken and appropriate grants of aid applied for in a timely manner.

Day Three and beyond (conclusion of hearing) – run in a fairly traditional way with more formal application of the rules of evidence, only the issues identified at Stage One which have not already

been determined in the earlier stages are addressed. Counsel will normally appear at this stage. Counsel may need to be briefed with transcripts of the evidence received during the earlier stages – this may depend on availability of funding and complexity of the issues. At this stage the court does not propose to provide transcripts and the parties need to maintain appropriate notes from Days one and two.

The matter may be listed if necessary before the Judge at any stage so that problems are addressed as they arise. Some Judges will deal with procedural matters in chambers. Others will have the matter listed for mention. Care should be taken to seek a party's consent in relation to any matters placed before the court in this manner. At all times, correspondence is to be with the Judge's Associate and NOT the Judge directly and cc'd to the parties.

Docket System – this system of case management has been introduced into the FCt. Each Judge will run their docket in their own way to ensure the flexibility needed for the management of any particular case. Essentially the three stages above have been adopted but there is no requirement for a questionnaire to be filed and there is no automatic involvement of the Family Consultant.

Property Matters – there is no set stage of matters for property proceedings. Once the conciliation conference has been conducted directions are made for the determination of a matter in the usual way.

Note: At the time of writing these standards, the FCt was yet to finalise a definitive pathway for LAT matters or the Docket system.

Note the use of subpoena is governed by Rule 16A.08 FLRules and in the FMC refer to Part 15, Division 15.3 FMCRules. Special note is also made to the Notice to Practitioners Brisbane Registry issued by the FMC on 31 October 2005. See **Annexure J and Annexure O.** Also consider s69ZW.

C20. Magellan cases

The Family Court has a separate case management system for matters involving allegations of child sexual abuse and serious physical abuse. If such matters are commenced in the FMC, consideration should be given to transferring them to the Family Court as soon as possible. **Note**: s33B FLAct and s39 FMAct

If a matter is identified by a judicial officer or the parties and the judicial officer at a conciliation conference, mention, directions hearing or interim hearing agree, as possibly suitable for inclusion in the list of matters to be designated Magellan, it is referred to the Magellan Registrar for consideration. If the parties consider the matter is suitable for inclusion but are still waiting for a further court date, they may write to the court seeking the matter be referred to the Magellan Registrar for consideration.

If the Magellan Registrar designates the matter as appropriate for inclusion, the matter is next listed as soon as possible before a Judge.

On the first return date, the Judge will normally hear any interim application, or list a matter on the next available date for the determination of interim issues and consider making directions for preparation of the matter for final hearing. If an Independent Children's Lawyer is not already involved in the matter, consideration may be given to appointing one. Because the matter is under the control of the Judge, there may be more than one directions hearing or interim hearing, dependent upon the Judge's directions for the involvement of an Independent Children's Lawyer, a family consultant, expert reports, subpoenas, the filing of further material or other matters.

The role of the Independent Children's Lawyer is not different in these proceedings. It can mean they are required to undertake additional investigations, but the general description of the role is not different.

There is a protocol with the Department of Communities (Child Safety Services) in Queensland, and in some other states for the provision of reports [Magellan Reports] providing a summary of the involvement of the Department with the family. The court may issue a request for the provision of this report or for documentation or information pursuant to s69ZW FLAct.

The final hearing of a Magellan matter is not different to a traditional trial because the issues in dispute are most likely to require a thorough forensic investigation into the allegations of abuse, the investigations undertaken if any by the Police and Department of Communities (Child Safety Services) and other matters.

Whilst the court events are similar to the traditional court events used in the Family Court, there are separate grants of aid.

C21. Property proceedings – trial

If the only issues in dispute involve Property Settlement, then directions for trial are issued by the Judge/Federal Magistrate when the matter is listed on Day one or mention following the conciliation conference. The practitioner needs to be able to confirm the issues in dispute, identify the asset pool, identify agreed values or seek directions for the appointment of a single expert to provide evidence as to valuations and be able to list the witnesses intended to called to give evidence. Directions for the proportion for trial will be determined.

C22. Further preparation for trial – both courts

Refer to Part 16.2 FLRules. When preparing for trial, the practitioner should:

1. ensure an updated grant of aid

2. inform the client in writing of the trial dates, confirming their need to attend along with their witnesses and steps taken in preparation for trial

3. file the material to be relied upon at trial, in compliance with the trial directions

4. confirm Counsel for the trial – by letter setting out trial dates and fees payable pursuant to Legal Aid Scale of Fees

5. issue Subpoenas - together with conduct monies (see subpoena Checklist at **Annexure J and Annexure O**)

6. inform witnesses of trial dates and ensure they have a copy of their affidavits or evidence, that they are available for giving evidence and arrange times for their attendance for the purposes of cross examination to minimise waiting time

7. give notice of witnesses required for cross-examination

8. give notice for admission of facts or tendering of documents by consent (Remember that for some documents to be accepted you may need to arrange for someone to be able to identify the document. These matters should be fully discussed well prior to trial to allow for

appropriate subpoena to issue if necessary)

9. comply with Rule 16.03 FLRules/Part 15 FMCRules in relation to appropriate notices regarding objections to affidavits and documents to be tendered

10. liaise with the other parties/their legal representatives for the preparation and filing of material pursuant to court directions [e.g. a Joint Case Summary Document - refer to Chp 6.7 CMG FCt, Case Outline FMC]. (regard should be had to the matters referred to in **Annexure N**)

11. file the Summary of Argument or Case Outline in accordance with court directions.

If there is any reason to believe a matter is not ready to proceed to trial, the matter should be brought to the court's attention as soon as possible.

If a matter has settled, this should also be brought to the court's attention as soon as possible.

C23. Brief Counsel for trial

The practitioner should retain and brief Counsel as soon as practicable. The Brief to Counsel must include all relevant filed court documentation; copies of any subpoenaed material available properly indexed [or summary of same if necessary, though copies of material should be sought if the matter is progressing to a trial]; copies of relevant diary notes, correspondence and other documentation and if appropriate a draft Joint Case Summary Document and Summary of Argument/Case Outline for settling.

Instructions to Counsel should set out the trial dates and court in which the proceedings are listed for hearing, the basic outline of the case to be determined, list the witnesses to be called by each party and a statement as to the relevance of that evidence, and confirmation of fees payable pursuant to Legal Aid Scale of Fees. If there are any particular issues in the case that should be brought to Counsel's attention, they should be clearly spelt out in Counsel's instructions. [e.g. previously agreed facts].

C24. Conference with Counsel

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

C25. Attend at the hearing and instruct Counsel

The practitioner should ensure all required witnesses are available for giving evidence and arrange times for their attendance for the purposes of cross examination to minimise waiting time. The practitioner should take accurate records of the proceedings including witness names a sufficient summary of the evidence given and directions or orders made by the court during the course of the hearing. A List of Exhibits should also be maintained throughout the trial.

It is recommended that during the course of the trial an adequate summary of questions and answer should be maintained by the instructing solicitor. As an instructing Solicitor, a practitioner should be taking careful note of the evidence to assist Counsel with their cross-examination and submissions.

A full filenote should be kept on the file confirming what occurs on each day of the trial. Handwritten notes from the trial should be placed on the file.

After the trial is concluded – write to the client informing them of the outcome and provide sealed copies of orders made or advising of the expected date of Judgment if known. The client should also be informed of their obligations under the orders and their right of appeal.

Ensure all accounts are finalised in a timely manner.

C26. Appeals

Following Final Judgment being delivered by the court, write to the client informing them of the orders made and Reasons for Judgment, supplying copies of both sets of documents if they are available.

Consider the appropriateness or otherwise of appeal and inform the client of their options in relation to appeals - Refer to Part X Family Law Act and Chp 22 FLRules. S20 FMAct.

If appropriate, an appeal should be discussed with the client and all time limits must be observed. If an appeal is considered appropriate:

1. take instructions from the client

2. seek a grant of aid for obtaining an advice on appeal from Counsel [in-house practitioners should consult with their coordinator and the Family Law Consultant about the case for a preliminary view on the prospects of an appeal] and assist the client in completing the Legal Aid Application Form.

3. provided legal aid funding is available to the client, the practitioner must assist the client to complete and lodge the Notice of Appeal.

Usually, a directions hearing is set for before an Appeal Court Judge to make directions for the preparation of the appeal books, including the transcript, and to have the matter prepared for a Hearing.

Appeal books can be very large. They are prepared by the appellant and the court will dictate how many books need to be filed. Usually there are two sets for each party and one set for each Appeal Judge.

The directions are checked for compliance by the Appeal Registrar and ultimate the matter is listed before the either a single Appeal Judge or the full court of the Family Court. Grants of aid need to be arranged for the client, whether they are the appellant or the respondent.

Grants are available for Counsel to appear on the appeal and Counsel needs to be briefed with all relevant material, but most importantly a complete set of appeal books. Counsel must be made aware of the court's directions as they will include the date for the filing of Counsel's Outline of Argument.

Practitioners are required to instruct Counsel at the hearing of the appeal. It is best that the same solicitor and Counsel who conducted the trial appear on the appeal wherever possible.

After the appeal is concluded – write to the client informing them of the outcome and provide sealed copies of any orders made or advising of the expected date of Judgment if known. Upon receipt of Judgment, again write to the client informing them of the outcome. The client should also be informed of their obligations under the orders and their right of any further appeal. LAQ may

consider further grants of aid, but this should be discussed with the Family Law Consultant before any request for further aid is made.

Ensure all accounts are finalised in a timely manner.

C27. Delays in Judgments

If at any time there is an extended and unexplained delay in receiving a Judgment, this should be brought to the attention of the Family Law Consultant. There is a protocol to be followed when chasing up an outstanding Judgment from the courts.

Part D – Case Management Standards specific to domestic violence

D1. Telephone instruction/advice

Information should be recorded when giving telephone advice as this will save the need for its repetition at a later time. The practitioner must be aware of and comply with the Best Practice Guidelines for Lawyers for working with clients who have experienced violence. A Copy of the Best Practice Guidelines are at **Annexure F.**

D2. Initial interview

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

Administrative and legal requirements

a. ensure the client has the information sheet

b. obtain full particulars of the other party, including nature of relationship and current address

c. explain the practitioner's role, and the limitations of that role

d. explain the client's role

e. request copies of any court documentation relevant to the matter

f. obtain a comprehensive account of the history of the relationship and of acts of domestic violence committed during that time (be as specific as possible with these instructions)

g. obtain detailed instructions on any recent acts of domestic violence, and in particular what motivated the immediate desire to seek protection

h. obtain instructions on why there is a likelihood that domestic violence will occur again

i. with reference to s20 of the Domestic and Family Violence Protection Act, the practitioner should determine whether an application to the court would be likely to succeed on the basis of the instructions and information to hand (the practitioner should explain these considerations to the client, and deal with the possibility that corroborating evidence may be required)

j. obtain information on children or other persons who may also need or wish to be included on an order as aggrieved persons (explain the requirements in this regard)

k. obtain information on the conditions which are sought to be included on a Protection order and the need for any qualifications

l. ascertain whether an interpreter will be required for subsequent attendances.

Non administrative or legal requirements

a. be prepared to work with or through interpreters, support workers and friends or family where appropriate, but be sure to encourage the client to participate to the greatest possible degree

b. be sympathetic to the emotions and concerns that the client may have, and be prepared to divert from the usual process if these emotions or concerns dictate

c. be familiar with other needs or issues that may be addressed such as children, accommodation, counselling, financial support, property settlement and ideas of reconciliation, and be prepared to offer meaningful advice and support

d. be focused in your approach to obtaining sufficient information to properly represent the client, and do not allow the interview to become sidetracked (one hour should be set aside for the interviews, but may be extended if necessary).

D3. Urgent temporary orders

If, after obtaining instructions on the history of domestic violence and the most recent incident, it becomes apparent the client is in danger of physical injury or his/her property is in danger of substantial damage (s32 requirements for ex-parte temporary order), an urgent application for a temporary protection order may be made. Obtain clear instructions on living arrangements as to whether the order will, or needs to have the effect of, evicting the respondent to the proceedings from his or her premises. Extreme care must be taken in making ex-parte applications that require such a condition as Magistrates may be reluctant to make these orders.

D4. Court procedure

A clear explanation of the application and court procedure must be given to the client. All possible options and likely outcomes of the application need to be covered.

D5. Implications of application

The practitioner should discuss the effects and implications of an application with the client, especially the effect of the existence of a protection order. This includes the legal prohibitions placed on the respondent, the procedure if breaches occur, and the necessity and availability of a variation or revocation of the order or certain conditions should the need arise. This is especially important if there is a likelihood that there will be a reconciliation.

D6. Completion of DV 1 application form

An application in the prescribed form is completed by the client with the practitioner's guidance and assistance. All sections are completed with special attention being given to the substantive sections, those being Nos. 13, 14 and 15 (history and recent incident of domestic violence and likelihood of recurrence). Any aggrieved persons are listed and reasons for their inclusion are also contained within Nos. 13, 14 and 15. Any weapons should be declared and the required conditions

must be decided upon. Include qualifications in relation to contact, property settlement, possible reconciliation or attendance at a legal aid conference.

D7. Acting as an authorised person

Should the practitioner believe that it would be better for that person to make the application on behalf of the client, as an authorised person (s14, s60), a written authority should be obtained (see Work Instructions Manual Appendix 2). The relevant section of the application is completed. The practitioner signs the application and has it witnessed. The practitioner is required to seek the leave of the court to act as an authorised person. Any practitioner who is not admitted as a solicitor or barrister needs to appear as an authorised person and must have a written authority and seek the leave of the court.

A disadvantage of such an application, is that the contents of the application become hearsay only. It is preferable to have the client complete the application and for a practitioner to appear as an authorised person only.

A hearsay affidavit may be prepared wherein the authorised person confirms that the application was prepared from instructions provided by the aggrieved spouse and that it is true and correct to the best of their knowledge. This affidavit can be tendered to support the application.

D8. Lodging an application for mention

The application is signed and witnessed by a Justice of the Peace or Commissioner for Declarations. Six copies of the application are made and the original and four copies are filed in the Magistrates Court Registry.

A copy is retained on file and one for the client. If the matter is urgent and an ex-parte temporary order is required, the practitioner needs to ask for the matter to be listed before the next available court. If this is not the case, a mention date in approximately two weeks is obtained. Efforts are made by the Police to serve the respondent in the meantime.

D9. Service

The Police are required to serve the application on the respondent. Private service is not sufficient for an application, but can be used for an application to revoke or vary.

D10. Evidence and witnesses

These matters will only usually arise if the application for a protection order is contested and listed for hearing. Doctors' reports evidencing injuries, previous protection orders, and statements from witnesses may be necessary to support your client's application. Witnesses to specific acts of domestic violence need to be organised well in advance and the practitioner should attempt to speak with them prior to the hearing to determine what they will be able to say.

D11. Negotiations with the respondent/solicitor

It may be appropriate for the practitioner to write to the respondent or their solicitor as to the future conduct of the case. A more detailed explanation of the allegations can be provided as well as some brief information on the legislative requirements and the likely outcome of the application. It may be prudent to confirm that an order will not be a criminal conviction, although criminal penalties apply to breaches and that qualifications allowing for contact will be included if

appropriate. The procedure for consent could also be explained in case the respondent wishes to write to the court in advance and does not wish to attend in person. Undertakings may be offered by the respondent at any stage of the proceedings.

D12. Arrangements for court

Ensure appropriate arrangements have been made with the client for their appearance at court. If there are security or safety issues, it may be wise to meet the client at the office and accompany them to the court. In extreme cases the court staff and police may be informed of your concerns.

Check the client understands the procedure for the court attendance and is advised correctly in relation to the need to bring other witnesses or documentation. Allow for sufficient time to confer with your client and with the other party or legal representative prior to court.

D13. The court process

Shield the client from any unnecessary conflict, or even contact with the other party if appropriate. This may mean that the client does not enter the court when the matter is called on. Separate rooms are sometimes available for an aggrieved spouse and support workers to wait prior to their applications being heard. The practitioner may negotiate with the respondent and this may result in either an undertaking to consent or an expression of a desire to contest. Either way, your client will not be required in court. Explain the negotiations to the client at all times. Ensure that the client's position is not compromised in any way and always seek instructions before agreeing to any proposals.

D14. The application

If a respondent consents to an order, the matter will be called on and both parties will make their appearances. The Magistrate will ask what is the position of the parties, and will be told by either party that the respondent has agreed to consent. The terms of the order will then be discussed and the effect of the order may be explained to the respondent. The parties are then asked to wait for the orders to be typed.

At a hearing, the aggrieved spouse gives evidence to support the application and will be subjected to cross examination. All witnesses are called before the respondent has the opportunity to respond. The same cross examination and re-examination process applies. Final submissions are then made and the Magistrate gives judgment. The rules of evidence do not strictly apply to these proceedings (s84) however the hearings follow the usual court process and where possible evidentiary rules are upheld.

The Work Instructions Manual deals in detail with the process of the application in the courtroom.

D15. Impact of Family Law Act and parenting orders

Care should be taken to ensure that appropriate orders are made to ensure consistency between parenting orders or other order under Part VII under the FLAct [as amended to 2006] and the Domestic Violence Order.

Consideration needs to be given to Division 11 of Part VII of the FLAct.

It is important to understand the consequences of any inconsistency between the orders and to prepare any matter to address this issue. S68Q of the FLAct provides that domestic violence

orders inconsistent with parenting orders or injunctions will be invalid. This must be explained to the client.

The court determining a domestic violence application [whether to make or vary such an order] may **revive, vary, discharge or suspend** a parenting order; a recovery order; an injunction under s68D or s114; an undertaking; a registered parenting plan or a recognisance, to the extent to which any of these provide expressly or impliedly for a person to spend time with a child.

There are limitations on this power –

1. The court must not take these steps unless it also makes or varies a domestic violence order [**final or interim**] **and** if the court has before it material that was not before the court that made that order or injunction referred to above.

2. The court must not **discharge** such an order, injunction or arrangement to make an interim domestic violence order or interim variation to a domestic violence order.

3. The court must have regard to the purposes of Division 11 [i.e. resolve inconsistencies; ensure people are not exposed to family violence (defined under the FLACt) and to achieve the objects and principles of the FLAct.

4. The court must have regard to the best interests of the child.

5. The court must be satisfied it is appropriate to vary, discharge or suspend the order, injunction because the person has been exposed to or is likely to be exposed to family violence [defined under FLAct] as a result of the operation of the order or injunction.

In making the “new” parenting order, the court need not apply the following provisions of the FLAct:

- s65C – who may apply for a parenting order
- s65F(2) – the requirement of the parties to attend counseling
- s60CG – the need to consider a risk of family violence [defined under FLAct]
- s69N – the requirement to transfer proceedings
- any provision that would otherwise make best interest of the child paramount. [note best interests are still taken into account even if not paramount – s68R (5)(b)]
- any provision of the act or rules specified in the regulations under the FLAct.

The court also has the discretion to consider the views of the children and any provisions of the FLAct or Rules that may pursuant to the regulations no apply. [s68S(2)]

The court may dispense with any otherwise applicable Rules of Court. [s68R(3)]

If the court exercises the power when making an interim domestic violence order or an interim variation to such an order – **then** the revival, variation or suspension ceases to have effect at the earlier of the time the interim order stops being in force **and** the end of the period of 21 days starting when the interim order was made.

No appeal lies in relation to the revival, variation or suspension.

Part E – Case Management Standards specific to acting as an Independent Children's Lawyer

Legal Aid Queensland in conjunction with private practitioners has developed Best Practice standards for Solicitors acting as an Independent Children's Lawyer [ICL]. In addition National Legal Aid has developed *Guidelines for Independent Children's Lawyers*, which are intended to provide guidance to the ICL in fulfilling his/her role. These Guidelines have been endorsed by the Family Court and the Federal Magistrates Court. All ICLs must read these documents and be familiar with them as they provide an indication of what can be expected of the ICL during the course of the matter.

The ICL must also be familiar with the Protocol that exists between the Department of Communities (Child Safety Services) [QLD] (the Department) and the Family Law Courts. This document is available through LAQ – refer to family law notes held in the LAQ Library.

The court appoints an ICL to independently represent the interests of a child. The ICL has a paramount responsibility to act in the best interests of each child they represent. This responsibility carries with it a duty to act impartially, to present direct evidence to the court about the child and the relevant issues, the child's views and matters relevant to the child's welfare and to make submissions having regard to all the evidence before the court.

There are positive obligations on the ICL. They are

1. form an independent view, based on the evidence, of what is in the best interests of the child

2. act in relation to the proceedings in what the ICL believes to be in the best interests of the child

3. make a submission to the court suggesting it adopt a course of action, if the ICL is satisfied that the course of action is in the best interests of the child

4. act impartially

5. ensure any views expressed by a child are fully put before the court

6. analyse any report or document used in the proceedings to identify matters that are the most significant for determining what is in the best interests of the child and draw these matters to the courts attention

7. endeavour to minimise the trauma to the child/ren associated with the proceedings

8. facilitate an agreed resolution to extent it is in the best interests of the child.

The FLAct states that the ICL is not the child's legal representative and is not obliged to act on the child's instructions.

The ICL is not obliged to disclose to the court and cannot be required to disclose to the court any information the child communicates to the ICL. They may however disclose any information communicated by the child if the ICL considers the disclosure to be in the best interests of the child. Such a disclosure can be made even if it against the wishes of the child – refer s68LA FLAct.

An extensive precedent package has been developed and reference to letters, forms and documents relating to the ICL's work should be made in conjunction with these Case Management Standards. These precedents must be used by in-house ICLs.

Generally, the ICL must be familiar with the court's Family Violence Policy and other relevant best practice guidelines and protocols relating to the investigation of child abuse.

Particular care needs to be taken in matters involving cross-cultural and religious issues and appropriate investigations undertaken, and where appropriate evidence placed before the court. When representing Indigenous children, the ICL should liaise with the Family Court Aboriginal and Torres Strait Islander Family Consultants or a relevant agency – with the aim being to appropriately consider the need of the child to maintain "a connection to culture" and how this can be effectively considered by the court in its determination.

Particular sensitivity should be applied when dealing with children with physical, intellectual, mental or emotional disability. Information from a treating specialist may be of assistance and appropriate liaisons should be undertaken.

The ICL must conduct the case in accordance with the Costs Protocols and Capping Restrictions pursuant to the Commonwealth Funding Guidelines.

E1. Notice of address for service and other notices

As soon as the file is received, the following must be undertaken:

1. file & serve Notice of Address for Service – Form 8 – refer R8.02 FLRules / Rule 6.01 FMCRules

2. inform the parties and their solicitors, by initial letters, of the appointment of the ICL, providing them with a copy of brochures prepared to explain the role of the ICL and the Family Report process, requesting they complete a questionnaire and sign relevant authorities to obtain information in relation to the family

3. notify of funding under the Legal Aid Queensland Act and requirements for payment of costs under the Commonwealth Guidelines.

E2. Letter directly to the represented litigant

Apart from an initial letter of introduction, all correspondence should be sent to a party's legal representative. The initial letter to the party needs to explain the role of the ICL and enclose the necessary explanatory brochures and inform them that all further communication must be through their legal representative.

If a party commences an action representing themselves, and then engages a solicitor it will be important to explain to the party that all further communication will need to be through their legal representative.

E3. Communication with a self represented litigant

All communication with a self represented party will need to be undertaken with care so as not to create the impression of bias and to ensure that the ICL remains independent, objective and focused on promoting the best interests of the children.

The other party should be advised of the fact of communications directly with the self represented litigant.

E4. Letter to Child Dispute Resolution Services

A letter should be sent to the Family Consultant [at the Family Court if one is involved in the proceedings at the time the ICL is appointed] informing them of the appointment of the ICL. The Family Consultant should be requested to contact the ICL to provide a preliminary overview of the dynamics of the family relationships and their impact on the children, details of other agencies involved with the family, recommendations for case management, any further counselling/therapy recommendations, details of any child abuse notifications. At no time should details of any confidential counselling be sought.

The ICL needs to be familiar with the provisions of the act concerning the role of a Family Consultant (see Part III of the FLAct).

E5. Letter to Department

Where the file indicates that the Department has been involved in the matter and a s91B Order is made, notification of the appointment of the ICL should be provided to the Department. A subpoena should be issued by the ICL to obtain the relevant documents from the Department unless an order is made under s69ZW of the FLAct. Inspection of all documents returned should be undertaken before a subpoena is issued.

Subpoenas – refer to Part 15.3 FLRules and Part 15A, Division 15.A.1 FMCRules. Special note should be made of the new procedures for seeking leave to inspect in the FMC (refer Rule 15A.13(1)) requiring the filing of a Notice to Inspect. Note also that all parties including ICLs must not issue more than 5 subpoenae in a proceedings without leave of the court (refer to Rule 15A.05).

E6. Meeting the children

It is expected that arrangements will be made, where practical and appropriate in each case, for the ICL to meet with the children. The appropriateness of such a meeting and how, when, where and with whom it will be conducted, will need to considered having regard to the need for the child to be informed of the role of the ICL, the court process, how the court will be informed of the child's views and the information that the ICL may need to obtain in relation to the child.

The ICL cannot offer the child a confidential relationship. The child needs to be made aware of the basis of the relationship, and in particular should be advised that the court will be advised of the child's views, though neither the court nor the ICL is bound by them.

The ICL needs to consider the emotional, cognitive and intellectual development levels of the child, issues of systems abuse and the need to explain court determinations to the child.

The ICL has a responsibility not to become a witness in the proceedings, and care should be taken to make appropriate arrangements when meeting with children. It is suggested that meeting the children should be arranged through the Family Consultant, the Family Report Writer or other professional already involved with the children. It is not the role of the ICL to take instructions from the child or to present evidence of the child's views from the bar table. Evidence of the child's views must be put before the court in an appropriate manner – refer s68LA FLAct.

The fact of the meeting with the children – noting time, date, place and who was present, must be retained on the file.

E7. Dealing with criticism of the Independent Children's Lawyer

An ICL may be the subject of criticism by either party. This may develop into abuse or harassment. The ICL should make clear and accurate records of any telephone conversations, limit contact by the party, require all communications to be in writing and confirm the details of any verbal contact in writing.

If there are fears for personal safety, the ICL has the same legal rights and remedies as any other citizen. Legal Aid Queensland should be made aware of any concerns and intended actions.

If there is a letter of complaint in relation to an in-house ICL, this should be immediately referred to the Director, Family Law, Civil Justice and Advice Services.

If LAQ receives a complaint in relation to an ICL, it will seek comment or a response to the ICL in relation to the issues raised and will investigate the complaint and respond in an appropriate manner to the party and the ICL.

E8. Right of the child to direct representation

A child of sufficient maturity may wish to have direct representation or to speak directly with the court. The ICL should, in appropriate cases, inform the child of the possibility of this and the processes needed for it to occur (for evidence from children refer to ss69ZV & 100B FLAct and Part 15.1 FLRules, for case guardians refer to Part 6.3 FLRules & Part 11 FMCRules).

E9. Conference/telephone other parties

The ICL should talk to the solicitors for the parties as soon as possible after receiving the file to determine in an informal way what other sources of information may be useful to follow up and whether further issues have arisen since the Order of the Court was made appointing the ICL. This may assist in providing the ICL with early insight into the attitude of the parties and their solicitors.

At some stage of the proceedings, and during the evidence gathering phase of preparation for a hearing to determine interim issues or a trial, the ICL should consider the appropriateness of negotiations with the parties and/or their legal representatives. A legal aid conference may be appropriate and should be considered at any time during the course of the proceedings. The purpose of the negotiations or conference should be to reach a resolution of the dispute – whether in part or whole.

All communications with a party or their legal representative should be recorded accurately and legible notes kept on the file.

E10. Contacting other witnesses

In gathering evidence, the ICL should consider obtaining information and/or reports from medical practitioners, teachers, counsellors etc. The ICL should include details of their role, the information required and how the information is intended to be used. Normally an authority from the parties is required. Refer to letters in Precedent Package to schools, doctors and the like.

It should be noted there is no confidentiality in the discussions with the ICL and the ICL must make the witnesses aware of this.

E11. Case management

The ICL is able to do anything permitted of a party pursuant to the FLRules and must comply with the FLRules and do anything required by them as if they were a party. Care needs to be taken that the ICL is also familiar with the FMCRules and that compliance is maintained with those rules.

A case plan should be developed with the assistance of the Family Report Writer and Family Consultant and reviewed by the ICL during the course of the proceedings regularly.

Information obtained by the ICL should be placed before the court in an appropriate manner. Release of the information should be considered in light of the affect its release may have on the parties and the safety of the children. This issue may need to be brought before the court for determination.

All documents filed must be served (Rule 7.04 FLRules & Chp 1 Part 2 and Part 6 FMCRules).

When entering into negotiations, the ICL must keep in mind that any agreement with their consent must be in the best interests of the children. If the parties reach an agreement which the ICL does not believe is the best interests of the children – then the ICL must not agree to the arrangement and the matter must be referred to the court for its consideration. The ICL must bring to the attention of the court, all those matters which caused the ICL to form the view that they could not agree to the arrangement (refer T & N unreported decision of Moore J. Nov 2003).

E12. Preparation for hearing of interim issues

Normally, this is the first court event attended by the ICL. Consideration should be given to the following in contemplation of this hearing:

1. subpoenas – refer to Part 15.3 FLRules/Chp 1 Part 15A FMCRules - note **Annexure J, Annexure O** & consider s69ZW

2. expert evidence – refer to Part 15.5 FLRules/Chp 1 Part 15A FMCRules

3. reports from treating experts /professionals

4. evidence of those matters relevant to the appropriate provisions of:

    - s61C – each parent has parental responsibility subject to a court order
    - s60CA – best interests are paramount consideration
    - s61DA, s65DAA, s65DAC and s65DAE – the presumption of equal shared parental responsibility and the consequences of shared or equal shared parental responsibility orders
    - s65DAB – the recent parenting plan
    - s60B – objects and principles

- s60CC, s61F – Factors used to determine best interests
- s60I & s60J– requirements for attending family dispute resolution services before court proceedings are commenced [if applicable]

The ICL should also keep in mind the following sections:

- s63DA – the option of the use of parenting plans rather than court orders
- s65M – s65P – the general obligations created by parenting orders

5. submissions to be made at trial – considering the relevant case law
6. counselling for the parties
7. future court events and directions needed
8. liberty to apply
9. the appropriate forum for the determination of the matter e.g. FMC/FCt [including LATS or Magellan].

At the Interim Hearing, all relevant material in the possession of the ICL should be placed before the court pursuant to the rules of evidence [as they apply – see Part VII, Division 12A FLAct]. Note the matters referred to in **Annexure N**.

Like other practitioners, the ICL should be prepared to make submissions about the directions the court will need to make to progress the matter and be able to inform the court about the issues, witnesses, proposed directions and length of trial. The ICL is there to ensure that the focus of the dispute remains on the relevant issues that will assist the parties to resolve, or the court determine, parenting arrangements to meet the best interests of the children. Matters to consider are:

- is the matter ready for trial? (Do other things need to occur or does time need to be allowed to have steps undertaken or progress to be made in relation to aspects of the matter e.g. counselling, completion of course?)
- the number of witnesses needed and why their evidence is relevant
- the length of trial – include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions
- the need for expert witnesses and a conference of experts if appropriate
- the need for a Family Report
- speaking to proposed Counsel and confirming availability.

The determination of directions to prepare a matter for trial provides a further opportunity for settlement negotiations. The ICL must ensure that there is a grant of aid to attend this court event in the FCt. Directions will be given for the preparation of the matter for trial (refer Part 12.02 FLRules and Part 10 FMCRules).

Immediately after the court event, when directions for trial are made, aid should be sought for the preparation of material for trial and attendance at any other court event prior to the final hearing. The ICL should review the case plan, assess the evidence needed to assist the court in determining the issues in dispute and making orders in the best interests of the children. Consideration should also be given to how to adduce that evidence before the court pursuant to the rules of evidence [as far as they apply]. It is important to remember that it is not the role of the ICL to adduce evidence to establish the case of a party.

(Refer T and S (2001) FLC 93-086).

E13. Family Reports & other expert reports

The ICL should consider making private arrangements for the preparation of a Report or the Appointment of a Single Expert Witness (refer Part 15.5 FLRules and Part 15 FMCRules). If the matter is before the FCt and is a LAT matter, then this matter should be dealt with on the first return date (see Chp 16A FLRules).

When considering the need for a Family Report or any other type of expert report– any special needs of the children should be considered. In addition, the ICL should be wary of obtaining unnecessary reports and exposure of the child to systems abuse. If there are already reports or there is existing information that can utilised by the court, a family report may not be necessary initially.

The ICL must comply with Part 15.5 FLRules and Part 15 FMCRules when engaging and instructing the report writer. An appropriately qualified & experienced expert should be engaged. Proper instructions should be given to the report writer. Refer to Expert Referral Document in the Precedent Package and the matters referred to in **Annexure N** when briefing the expert.

The ICL is not bound by the recommendations of the report writer and it should be noted that the report is one piece of the evidence. The ICL does however need to make submissions based on the evidence before the court – all of the evidence.

E14. After determination of interim issues

Where the arrangements for the children break down, the ICL should take steps to minimise the impact on the children. Matters to consider include:

- re-listing the matter
- application to suspend any parenting order
- further counselling or therapy
- keeping the child informed
- the ongoing relationships between the child and others
- organising a Legal Aid Conference
- whether to act as broker prior to or at the conference
- the role of the ICL at the conference

- any further reports/information to assist in negotiations.

Applications by the ICL are not common and should only be brought in exceptional circumstances.

After a Legal Aid Conference, or following an appropriate period of time, the ICL should consider the state of the evidence and determine whether there should be any further or updating Expert Evidence.

In Contravention Applications the role of the ICL is very limited. Generally, the role is not an active one. However, where the ICL considers such proceedings are detrimental to the best interests of the children, or the ICL's presence may further the children's best interests, they should attend and participate in the proceedings as considered appropriate or alternatively seek leave of the court to withdraw from the proceedings. This is a matter for the ICL to determine.

E15. Dealing with supervisors

The expectations of supervision, when time spent with a child is not supervised at a contact centre, should be explained to the proposed supervisor in detail by the ICL or the Family Report Writer. The proposed supervisor should be spoken to directly to ensure they understand the need for supervision [this can mean a very detailed understanding of the reasons that supervision has been put place] and fully appreciate the role and responsibility of being a supervisor. The ICL needs to use their best endeavours to ensure that the proposed supervisor is an appropriate person to supervise and can protect the child during the visits. It is best practice and common sense to write to the supervisor confirming their approval or otherwise as a supervisor. A copy of any letter should be sent to the parties. The letter should set out a brief statement of the reasons for the supervision and the provisions of any relevant court orders and details of the role of the supervisor and their responsibilities. The letter should also request that the supervisor keep a diary of events surrounding supervision and confirm that they may need to be a witness in proceedings. The supervisor should be asked to sign a copy of the letter and return that signed copy to the ICL to confirm they understand their role and the responsibilities they have as a supervisor. A copy of this letter should also be provided to the parties.

The parents and the children should meet the supervisor before any formal supervision takes place. Ideally, the Report Writer should be involved in this introduction process. Funding and timing need to be considered should this process be adopted.

If a contact centre is to facilitate the parenting order, it is usual for the centre to have their own introduction process. Each centre has its own requirements and the ICL should be familiar with the details. It is important that the centre is aware of the arrangements to give effect to the parenting orders and leave of the court may be necessary to provide the centre with all appropriate information.

E16. LAT (Less Adversarial Trials)

The less adversarial system of legal procedures prescribed under Division 12A of the Family Law Act, will apply in both the Federal Magistrates Court and the Family Court to:

- all parenting, child maintenance, and parentage proceedings filed after 1 July 2006 (but not Hague convention, contempt or contravention applications, applications relating to medical procedures, child support applications, or applications relating to a passport)

- all proceedings to which the parties consent to the matter being determined in a less adversarial manner (and the court grants leave) – for example, parenting proceedings commenced before 1 July 2006 and property proceedings whenever commenced.

The Federal Magistrates Court will incorporate the less adversarial procedures into the court's existing case management processes (in particular the docket system).

The Family Court has established LAT as the system of case management for matters in the less adversarial stream. The new Docket System is very similar. Refer to section **C18** of these standards. Parenting matters where there are serious allegations of abuse will still be dealt with in the Magellan stream in the Family Court. See separate section on Magellan Cases and Trials (**C20**).

If the parties have both property and children's proceedings before the court, the parenting proceedings may be in LAT either because the proceedings were commenced after 1 July 2006 or because the parties have consented to those proceedings being dealt with in the program. If the parties do not consent to the property proceedings being dealt with in the program, the court may have to consider two trials.

Refer to **C19** for further information.

E17. Magellan matters

Refer to **C20** for further information.

E18. Preparation of material

Preparation for trial in either of the Family Law Courts has already been discussed at **C18 and C19.** The same standards apply to the ICL as to any other practitioner.

The ICL should review the following matters in the lead up to the trial:

- iIs the matter ready for trial?
- the number of witnesses needed and why their evidence is relevant
- the length of trial – include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions
- the need for expert witnesses and a conference of experts if appropriate
- the need for a family report
- speaking to proposed Counsel and confirming date availability.

Part of the preparation for the trial needs to include a consideration of what orders should ultimately be made by the court. It is appropriate to have formed a preliminary view at the commencement of trial and consideration to matters such as ongoing involvement of counsellors is not inappropriate. For example if there is to be ongoing monitoring or assistance given to the parties and their children, s65L of the FLAct may provide an opportunity for the courts to assist the family.

If there is any reason to believe a matter is not ready to proceed to trial, the matter should be brought to the court's attention as soon as possible.

If a matter has settled, this should also be brought to the court's attention as soon as possible.

E19. Briefing Counsel

Counsel should be retained as early as possible after the matter is listed for final hearing. It may be useful to discuss the matter with Counsel to assist in the development of the Case Plan. Legal Aid Queensland guidelines do not normally enable Counsel to be engaged for a hearing of the interim issues, although it is possible in exceptional circumstances.

As soon as trial dates are set and aid for the trial has been approved, Counsel should be retained and briefed for the trial. Counsel must be appropriately qualified and experienced to act on behalf of the ICL, and reference should be made to the requirements for appointment as an ICL to the Legal Aid Queensland Independent Children's Lawyer and Separate Representative Panel when determining if Counsel is appropriately qualified. Counsel may be instructed to advise in relation to evidence and case management strategies. Special grants of aid would need to be sought for formal advice to be obtained.

The Brief to Counsel must include all relevant court documentation including any trial plan, copies of any subpoenaed material available [or summary of same], copies of relevant diary notes, correspondence and other documentation. Instructions to Counsel should set out the trial dates and court in which the proceedings are listed for hearing, the basic premise of the case, a list of the witnesses to be called, Summary of Argument or Case Outline for settling and notice of fees payable pursuant to Legal Aid Scale of Fees.

E20. Costs

There is an obligation on the ICL to provide to the court and to each party a written statement of the actual costs incurred by the ICL up to and including the trial (refer Rule 19.04 (4) FLRules. This is a rule not often enforced by the FCt).

ICLs need to be aware of the rules in the FCt and the FMC in relation to costs (refer FLRules Chp 19 and FMCRules Chp 1 Part 21).

If the matter is one in which costs are an issue, then strict compliance with the rules in relation to costs may be essential to obtaining an appropriate court order.

The Commonwealth Government Guidelines contain the requirement for the recovery of the costs of the ICL in certain circumstances. Notice in relation to the Guidelines must be given to the parties when the ICL is appointed and LAQ will advise the ICL if any further steps need to be taken in relation to costs at the appropriate time.

ICLs should be mindful of the parties capacity to meet costs and raise this at a relevant time during the course of the proceedings. This may be relevant to matters such as costs orders and/or the payment of expenses such as the costs of an experts report.

E21. Trial

It is part of the duties of the ICL to provide to the court, in proper format, the views of the child and to make submissions suggesting the adoption of a course of action that is in the best interests of the child. The submissions and view of the ICL must be based on the evidence available. In the

event that the ICL forms a preliminary view, it may be appropriate to inform the court at the commencement of the hearing of that view. It may not be possible for the ICL to form a final view in relation to the matter until after the evidence is tested by cross-examination and at times, a concluded position may not be possible.

It may be appropriate to provide the court and the parties with draft orders. Preparation of draft orders can assist in facilitating a resolution to some if not all of the issues in dispute.

In making submissions, the ICL should assist the court in bringing together all the threads of the case.

E22. At the conclusion of the trial

The ICL should consider whether copies of any orders, Reasons for Judgment or copies of any of the Material filed in the court, should be provided to any professional involved with the family or the police or the Department of Child Safety.

In appropriate matters, the ICL should make arrangements for the orders to be explained to the children.

E23. Delays in Judgments

If at any time there is an extended and unexplained delay in receiving a Judgment, this should be brought to the attention of the Family Law Consultant. There is a protocol to be followed when chasing up an outstanding Judgment from the courts.

E24. Appeals

An ICL has the right to appeal orders made by the court but should only do so in appropriate circumstances. Where appropriate, when another party appeals, the ICL should participate in the appeal proceedings. Aid for an appeal must be sought for the ICL and Counsel whether the ICL is the applicant or the respondent.

Consideration should be given to meeting with the children to explain the appeal process.

E25. When child abuse is suspected

It is arguable that an ICL is obliged to make a notification to the Department about a child if the ICL has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused. The Notification must be made as soon as practicable and include the basis for the suspicion (**see s67ZA FLAct)**. The section refers to a “lawyer independently representing a child’s interests”. Elsewhere in the FLAct the ICL is referred to as the Independent Children’s Lawyer, which is a term with a special meaning. Arguably, s67ZA could relate to a lawyer receiving direct instructions from a child. In any event, if the lawyer, in whichever role, is in receipt of direct evidence of abuse of a child then they should carefully consider their position and determine if a notification to the Department is required.

Assuming the section applies to the ICL, a similar notification may be made by the ICL if the ICL has reasonable grounds for suspecting that a child has been ill treated, or is at risk of being ill treated; or has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child;

The obligation to notify does not apply if the person knows that the authority has previously been notified about the abuse or risk. If such a situation arises, a practitioner should consult the Family Law Consultant.

Whilst there is some protection given pursuant to s67ZB in relation to such a notification, it is recommended that care be taken before notifying the Department. In particular, the ICL will need to consider how they can maintain their duties generally and specifically to act impartially in the matter if they are a notifier. If a notification is made, then it may result in the lawyer having to discontinue their involvement in the matter. For the ICL in particular, the notification, or more pointedly their possession of information upon which the notification is made, may mean they will need to be witness in the proceedings.

Part F – Case Management Standards specific to acting as Separate Representative – Child Protection

F1. Acting as a Separate Representative

LAQ in conjunction with private practitioners has developed standards for solicitors who are appointed to act as a Separate Representative pursuant to the provisions of the Child Protection Act (CPA). These standards apply to both Children's Court and Queensland Civil and Administrative Tribunal (QCAT) matters. All Separate Representatives should observe the standards as they provide an indication of what can be expected of a Separate Representative during the course of a matter. The following are recommended minimum standards of behaviour and practice and need to be read in conjunction with existing professional and ethical standards governing the profession, judicial directions, practice directions, protocols, case law and related legislation.

It is important to note that while the legislation provides limited guidance as to the role of the Separate Representative it does not provide any guidance as to how this role is to be performed or the powers, duties and rights of the Separate Representative.

The Separate Representative must comply with any rules, regulations, practice directions, protocols and case management guidelines that may arise in relation to the role.

The Separate Representative has a paramount responsibility to act in the best interests of each of the children they represent. This responsibility carries with it a duty to act impartially, to present direct evidence to the court or QCAT about the child, the child's wishes and matters relevant to the child's welfare, to make submissions having regard to all of the evidence before the court or QCAT and to assist the court or QCAT in making a decision that is in the best interests of the child.

The professional relationship between the child and the Separate Representative is not a "Solicitor-Client" relationship. The Separate Representative cannot offer the child a confidential relationship. The child needs to be aware of the basis of the relationship and in particular needs to be made aware that the court and the Separate Representative will listen to what they have to say but that neither are bound by those wishes.

It should be remembered at all times that the role of the Separate Representative relates to the proceedings presently before the court or tribunal and ultimately that role will cease. The parties, including the Department of Communities (Child Safety Services) (the Department) and the child will possibly have some ongoing involvement with each other after the role of the Separate Representative ceases. Care should be taken by the Separate Representative to ensure that good relations between the parties can be maintained after the role of the Separate Representative ceases.

F2. Conduct of separate representation files

Practitioners undertaking Separate Representation services in child protection and/or QCAT proceedings are subject to all provisions of the Service Agreement and Undertaking in relation to the conduct of these matters. In the conduct of these matters, practitioners will no doubt utilise the services of other lawyers and support staff to assist in the running of the Separate Representative's file. This will include assisting in:

- gathering evidence
- issuing subpoenas
- attending at court for uncontested mentions and the making of previously agreed orders by consent
- arranging appointments for assessments
- the preparation of the case for mention, conference and hearing
- arranging attendance of witnesses at court or the tribunal.

Any assistance must be subject to the supervision of the Separate Representative at all times.

All substantive decisions in relation to the conduct of the case and any exercise of discretion will be taken personally by the Separate Representative, or an appropriately qualified agent (i.e., another member of the Independent Children's Lawyer and Separate Representative Panel who has been approved to undertake Separate Representative work). This will include:

- attending the Department to peruse file material
- determining an appropriate expert to retain in a matter
- conducting case discussions with any expert retained
- determining any recommendations to be made to the court at any stage
- attending Family Group Meetings on behalf of the child
- attending Court Ordered Conferences on behalf of the child
- being personally responsible for instructions to Counsel during the course of a hearing.

Subject to appropriate notice being given and appropriate staff being available the inhouse Separate Representatives are prepared to undertake town agency matters for other members of the Panel.

F3. Inhouse precedent package

Where applicable it is expected that in house practitioners will use the relevant letters and documents contained in the precedent package.

F4. Confidentiality

The Separate Representative is bound by the confidentiality provisions of the *Child Protection Act 1999* and in particular s188 which provides that as a 'receiver' of information about another person's affairs the Separate Representative cannot give access to this information unless the disclosure is for a purpose directly related to the child's protection or welfare or is otherwise required or permitted by law.

Any provision of documentation to report writers or other experts should be accompanied by a reminder of the confidentiality provisions. Any documentation provided to report writers or other experts by the Separate Representative must be retrieved from the expert and destroyed at the conclusion of the matter.

F5. Dealing with the Department

Communications with the Department should take the same form as with any other party to the proceedings. It should also be taken into consideration that although a professional party in the proceedings, the Departmental person is unlikely to be legally represented until late in the proceedings. Particular care should be taken to accurately record the details of any conversations with Departmental officers. Where possible the Separate Representative should confirm conversations with Departmental officers in writing.

F6. Dealing with unrepresented parties

Communications with an unrepresented party should take the same form as with another legal practitioner. Particular care should be taken to accurately record the details of any conversations with the unrepresented party. The Separate Representative should consider sending a letter to the party confirming the details of the conversation.

At all times the Separate Representative should use plain English when communicating with unrepresented parties.

F7. Notice of Address for Service

Upon receipt of the file material from LAQ the Separate Representative should file a Notice of Address for Service in the relevant registry.

The Notice of Address for Service should be served on all other parties. In the case of the Department the practitioner should serve a copy of the Notice of Address for Service on both the relevant Child Safety Service Centre and also the Court Services Unit.

F8. Letters to parties and/or their legal representatives

Within five (5) days of their appointment the Separate Representative should send a letter to the parties advising their appointment and explaining the role of the Separate Representative in the proceedings. They should also enclose a copy of the relevant LAQ factsheet. If the party is unrepresented the Separate Representative may forward a Questionnaire with the initial letter to be answered by the party and returned to the Separate Representative along with blank authorities for third persons to release information to the Separate Representative.

If the party is legally represented, the initial letter will be sent to the legal representative along with a copy of the relevant LAQ factsheet. The Separate Representative may also forward to the legal

representative a copy of the questionnaire and blank authorities requesting that they have their client complete them and return them to the Separate Representative.

Following on from the initial letters, the Separate Representative should talk to the solicitors or the parties, as the case may be, to determine in an informal way, if possible, any sources of information that the Separate Representative may need to contact and to gain an early insight into the attitudes of the parties and their solicitors.

In all written or verbal communications the Separate Representative should take care to adopt Plain English guidelines.

F9. Letters to the child/children

Upon their appointment the Separate Representative should consider whether it is appropriate to write to the child/children to introduce themselves and enclose copies of relevant information sheets. In deciding whether this is appropriate, the Separate Representative should take into consideration the age and ability of the child to understand, the child's knowledge of the proceedings and the reasons for the appointment of the Separate Representative.

F10. Dealing with non-parties

During the course of their appointment the Separate Representative may have reason to talk to non-parties interested in the proceedings. The Separate Representative should take into consideration that, in accordance with the legislation, these persons are not parties to the proceedings but the court may hear submissions from a member of the child's family or anyone else the court considers relevant to the proceedings and may refer them for legal advice in this regard.

The Separate Representative should accurately record the details of all conversations with non-parties and should take special care not to provide confidential information or documents to them.

F11. Dealing with other people working with the child/family

During the course of their appointment the Separate Representative may need to communicate with other people who are working with the child including counsellors, school teachers and other persons. Care should be taken in these discussions as these persons have an ongoing relationship with the child or the child's family which will outlive the involvement of the Separate Representative.

If information about these persons has initially been obtained by the Separate Representative from their perusal of the Department’s file the Separate Representative should, prior to contacting the person, notify the Department of their intention to contact the person. The Separate Representative may require the assistance of departmental personnel to obtain further information from the person or to facilitate contact with the person.

The Separate Representative should accurately record the details of all conversations with other professionals and should take special care not to provide confidential information or documents to them.

F12. Attendance at the Department to inspect file

Upon their appointment the Separate Representative should contact the relevant Child Safety Service Centre and make an appointment with the current Child Safety Officer to peruse the Department's computer and paper file material.

Initially the Separate Representative should obtain copies of the following documents (please note this list is provided as a guide only and is not exhaustive):

- notifications, investigations and assessments
- SCAN minutes
- Family Group minutes
- any external assessments or reports e.g. medical or educational
- child and parental strengths and needs assessments
- copies of case notes relating to observations of contact or conversations with other professionals e.g. school or doctors
- relevant police checks
- carer assessments
- case plan
- other relevant case notes.

The Separate Representative will usually be required to sign a 'Records Management Services – Access to information – interim receipt form'. While practice may differ from office to office, Departmental procedures require Departmental officers to photocopy the material and the release of the material must be approved by senior staff.

It is anticipated that after performing the physical inspection the Separate Representative will clearly tag each of the documents of which the Separate Representative requires copies.

Once the documents have been photocopied and approved those documents will be forwarded to the Separate Representative by the Child Safety Service Centre.

Over the course of the matter it may be necessary for further inspections to occur and the Separate Representative should follow the procedures outlined above in those circumstances.

Where a Separate Representative is unable, due to distance, to inspect the Departmental file they may ask the social assessment report writer to assist with the file inspection. In these circumstances the Separate Representative should inform the relevant Departmental officer the name of the person who will be undertaking the inspection and the procedure outlined above will apply to their inspection. The Child Safety Service Centre will only provide copies of the documents requested to the Separate Representative who will then need to provide the report writer with the documents received.

F13. Social assessment reports

The Separate Representative should consider whether a Social Assessment Report or other expert report is required. The Separate Representative should be wary of obtaining unnecessary reports and exposing the child to systems abuse. The Separate Representative must consider why the report is being obtained and whether in the circumstances the report is necessary.

Separate Representatives should carefully consider what type of report is required including which persons need to take part in the assessment. If the assessment is to involve the parties as well as the child, the Departmental officers involved in the matter must also be interviewed as a party to the proceedings.

Before applying for a grant of aid to obtain a report the Separate Representative should use their professional judgment to:

- confirm that any previous reports on the Departmental file are not sufficient to assist the court or QCAT in the determination of the matter;
- determine whether obtaining a social assessment or other report will assist the court or QCAT in its determination of:
    - the outstanding issues before the court or QCAT and
    - the orders that will best promote the best interests of the child;
- consider whether the required report should properly be obtained by the Department, for example where the Department alleges that a parent has psychiatric issues that require an assessment then the Department should obtain and pay for that report as part of their case.

Where the Separate Representative considers that the report should be obtained as part of the Departmental case, then they should contact the Department and request them to obtain it. It is good practice to make such a request in writing and to provide a copy of the request to the Departmental Court Services Unit. Where the Department refuses to obtain the report and the Separate Representative determines that the report is necessary in determining the child's best interests, then the Separate Representative may apply for a grant of aid to obtain this report.

Where the costs of a report are likely to exceed the costs paid at LAQ rates, then the Separate Representative may contact the Department and request financial assistance in obtaining the report. Separate Representatives should be aware that Departmental policy dictates that where the Department are contributing to the cost of the report, then the Department will usually want some input into who is to be engaged, the terms of the brief, and what material is to be provided to the expert. In these circumstances, the process for briefing the expert is similar to briefing a single expert in the family law jurisdiction.

Where the Separate Representative determines that a joint brief of the expert is not appropriate in the circumstances, they may apply to LAQ for payment of additional costs. Please note that such requests must be made prior to any costs being incurred.

If the Separate Representative decides to obtain a report, letters should be sent to each of the parties, including the Department, notifying them that a report will be prepared, the name of the report writer and enclosing relevant LAQ factsheets.

F14. Engaging a report writer

The Separate Representative should engage an expert having carefully considered the issues to be addressed and the qualifications and experience of the expert. In selecting an expert the Separate Representative may consult with other Separate Representatives or experts. The Separate Representative should brief the expert with a clearly completed referral including all information and documentation necessary to complete the assessment. The referral should specify the issues the expert is to address in their report whilst not fettering the assessment process of the expert. The Separate Representative should clearly mark in the brief to the expert that the material is confidential and must not be disclosed.

The Separate Representative is not bound to adopt the recommendations of the expert in submissions. The recommendations are to be considered as one part of the evidence before the court and all of the evidence must be evaluated in context.

Where an expert produces a report the report should be attached to an affidavit setting out the expert's qualifications and experience. A copy of the affidavit and report should be filed in the registry and served on all parties. In the case of the Department the Separate Representative should serve a copy of the affidavit and report on both the relevant Child Safety Service Centre and also the Court Services Unit.

F15. Meeting with the child/children

It is anticipated that the Separate Representative will meet with the child/children during the term of their appointment. Before meeting with the child consideration needs to be given as to why, when, how and where the meeting occurs, the age of the child/children, whether the child is expressing a wish and the impact meeting the children may have on the children.

In order to protect their independence the Separate Representative should consider meeting the child away from the Departmental offices. It is best practice for the Separate Representative to avoid meeting with the child alone and thus avoid becoming a witness in the proceedings. Accordingly any meeting with the child/children should ideally be facilitated by the social assessment report writer. Where no report writer is engaged the Separate Representative should ideally meet the child in the presence of a member of the child's family, the child's carer or other third person. Any such meetings should be conducted on the basis that they are reportable.

The Separate Representative should take particular care to avoid exposing the child to a risk of systems abuse. The Separate Representative may exercise their discretion not to meet the child where they have determined that meeting with the child is not in the child's best interests.

When meeting with a child the Separate Representative should explain their role and answer any questions that the child has about the legal process. The Separate Representative should also explain that while their role is to present the child's wishes to the court it is ultimately the court who will make a decision about the matter.

F16. Family Group Meetings

S51L of the Child Protection Act provides that Separate Representatives attend and participate in family group meetings.

Subject to a grant of aid the Separate Representative should attend Family Group Meetings arranged by the Department during the term of the matter.

Separate Representatives should be mindful that matters discussed at Family Group Meetings are admissible in the court proceedings.

Attention should be given to the development of an appropriate case plan which reflects the parent's capacity to engage with support, therapeutic or other services. Prior to the meeting the Separate Representative should also ascertain what assistance or support the child requires in their current placement and what interventions would be in the child's best interests.

If an earlier case plan is in existence consideration should also be given to the outcomes and goals which have already been achieved by the family and which do not need to be included in the new case plan. The Separate Representative may request that previous outcomes be included in the case plan with a notation that the goal has been achieved by the family.

Where a Separate Representative does not agree with case plan outcomes or actions proposed by the Department, then they should ensure their disagreement is noted in the case plan document.

Separate Representatives should take care to ensure that the goals and outcomes listed in the case plan are achievable by the family and the department and include some mechanism to measure progress in achieving the case plan goals.

Where a case plan has been reviewed, the Separate Representative should draw the Department's attention to their obligation under s51X of the CPA to file a copy of the review report along with the revised case plan.

F17. Attending court events

The Separate Representative should attend all court events in the matter in accordance with their grant of aid.

Prior to each court event the Separate Representative should:

1. obtain an appropriate grant of aid to attend
2. consider the possibility of settlement prior to the court event
3. ensure they have been served with any updating material
4. consider whether an interim order in favour of the Department or other suitable person is necessary in the circumstances.

Where a Separate Representative is unable to attend court for a court event due to the court being in a remote area or their other court commitments, the Separate Representative should notify the court, in writing, at least five working days prior to the court mention of their inability to attend and request arrangements be made for them to take part in the court event by telephone.

Where the Separate Representative is unable to engage an agent to appear, and arrangements for them to appear by telephone have not been made, then the Separate Representative must provide detailed written submissions to the court, and copies to each of the parties, prior to the mention of the matter. These submissions should include an indication of the Separate Representative's position in relation to any temporary orders, for example, a temporary order granting custody to the Department.

The Separate Representative must also be contactable by telephone during the time of the mention.

Subject to appropriate notice being given and appropriate staff being available the inhouse Separate Representatives are prepared to undertake town agency matters for other members of the Panel.

F18. Applications for adjournments

From time to time the Separate Representative may need to request that a matter be adjourned. The Separate Representative should only make an application for an adjournment if it is in the best interests of the child to do so bearing in mind that child protection matters should be dealt with as quickly as possible in the best interests of the child.

Where the Separate Representative intends to obtain an adjournment they should notify all parties of their intention and the reasons why the adjournment is being sought.

F19. Applications on adjournment

At each mention of the matter the Separate Representative should consider their position in relation to any temporary orders relating to the child/children, for example an order that the chief executive have interim custody of the children. The Separate Representative should be mindful of any need to secure the child's protection during the adjournment period and whether an interim order is necessary to secure that protection.

Prior to each court event the Separate Representative should also review the current case plan and assess its appropriateness.

The Separate Representative should also consider s67 & s68 of the CPA and whether application should be made for orders for:

a. a social assessment report

b. medical examination or treatment of the child

c. contact with the family during the adjournment period

d. the convening of a family group meeting

e. the convening of a court ordered conference.

Prior to the day of the mention the Separate Representative should make contact with the relevant court to ascertain the applicable practices and procedures in that registry, for example, in some Children's Courts the Magistrate will require legal representatives to remain seated throughout any appearance.

On the day of the mention the Separate Representative should ensure their attendance in a timely manner. The court will need to be advised of the material upon which the Separate Representative intends to rely to support any application for interim orders or for interim orders to be discharged. The court may ask for the submissions which support the Separate Representative's position. Reference should be made to relevant sections of the CPA and the relevant procedural rules.

When considering submissions, regard should be had to the matters referred to in ss 5, 9, 10, 59 and any other relevant sections of the CPA.

Following each interim hearing the Separate Representative should consider whether or not to advise the child/children of outcome of the hearing and the effect of any orders made by the court.

The Separate Representative should ensure that copies of every order are received from the relevant registry and placed on the file.

F20. Entering into negotiations

If the Separate Representative forms a view in relation to the matter that view should be made known to the parties through their solicitors if they are represented and directly if they are not, as soon as practicable after the view is formed.

In entering into negotiations the Separate Representative should keep in mind their role to act in the best interests of the child.

In considering any settlement proposals the Separate Representative should have regard to the appropriateness of the case plan in relation to the children and whether the case plan requires amendment prior to any orders being made.

If the parties reach an agreement with which the Separate Representative is unable to agree, the matter should be referred to the court and the Separate Representative should make submissions stating their view.

F21. Court Ordered Conference

The purpose of the Court Ordered Conference is to decide the matters in dispute or to try to resolve them. The Separate Representative must, subject to a grant of legal aid, attend the Court Ordered Conference.

At the Court Ordered Conference the Separate Representative should advise the parties of their view and of any prospects of settlement. The Separate Representative should assist in making recommendations for the future conduct of the case.

At the conclusion of the conference the conference convener will prepare a written report for the Magistrate on the outcome of the conference including whether an agreement has been reached.

Where an agreement has been reached, the report will reflect the agreement and the order sought and the report is to be signed by the convener, the parties and legal representatives and placed on the court file. Separate Representatives should also sign the report and ensure they receive a copy of the report from the conference convenor.

Communications at a Court Ordered Conference are confidential and can only be used in court proceedings with the consent of all of the parties. If the Separate Representative wishes to advise the court of the content of communications at the Court Ordered Conference they should first obtain the consent of the parties.

In the event that subsequent Departmental material contains communications from the Court Ordered Conference representations should be made the Department to withdraw the material. In the event the material is not withdrawn then the Separate Representative should make an application to the court to disregard that material.

F22. Mention following the Court Ordered Conference

The matter will be mentioned again after the conclusion of the Court Ordered Conference. If an agreement has been reached then orders can be made at this mention.

Where no consent has been reached and the matter is proceeding to a contested hearing the Separate Representative should use this court event to obtain directions on the steps that need to be taken for the preparation of the matter for trial.

Things to do to prepare for the mention:

1. Where possible develop a case theory.

2. Prepare a plan for the trial – What are the issues? What evidence is needed to support each of the parties application? How long will it take to prepare for trial?

3. Consider the need for expert witnesses and a social assessment report or an update to an existing report.

4. Ascertain the review date for the current case plan and whether it will need to be reviewed prior to the trial.

5. Consider the likely number of witnesses and the length of trial – include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions.

6. Speak to proposed Counsel and confirm their availability.

7. Request a date for hearing and where possible filing directions.

8. Consider whether the matter is complex and should be listed before a specialist Children's Court Magistrate.

At the mention, the Separate Representative should seek directions for the preparation of the matter and filing dates for each party. The Separate Representative should seek that the Department file its material first, then the Separate Representative and ensure that sufficient time is allowed for the parents to file their material in response.

Immediately after the mention, aid should be sought on for the preparation of material for trial and attendance at the trial. Where the matter is complex aid should be sought for Counsel.

Where the matter has been listed for trial, it is suggested that the Separate Representative seek trial directions in a form similar to those set out in **Annexure Q.**

F23. Briefing Counsel

Having consideration to the funding policy of LAQ, Counsel may be briefed to appear for the Separate Representative at a hearing.

The Separate Representative should retain and brief Counsel as soon as practicable. The brief to Counsel must include all relevant court documentation including any trial plan, copies of any subpoenaed material available [or summary of same if necessary though copies of material should

be sought if the matter is progressing to a trial], copies of relevant diary notes, correspondence and other documentation.

Instructions to Counsel should set out the trial dates and registry in which the proceedings are listed for hearing, the basic premise of the case, list the witnesses to be called by each party, a statement as to the relevance of that evidence and confirmation of fees payable pursuant to Legal Aid Scale of Fees.

F24. Conference with Counsel

The Separate Representative should arrange a conference with Counsel as early as practicable.

F25. Departmental preparation for trial

Where matters are proceeding to a contested hearing the Department will usually engage Crown Law to appear at trial. Where Crown Law are not available, the Department may engage members of the private bar.

Officially Counsel is instructed by the applicant for the child protection order. In practice the matter is usually prepared by the Court Coordinator in the local Child Safety Service Centre in conjunction with the relevant departmental officer in the Court Services Unit. The Separate Representative should liaise with those officers and any legal representatives of the parents with regard to preparation of the matter for trial.

F26. Evidence and witnesses

These matters will only usually arise if the application for a protection order is contested and listed for hearing. Doctors' reports evidencing injuries, previous protection orders, and statements from witnesses may be necessary to support the party's competing applications. Witnesses will need to be organised well in advance. Where the Separate Representative is calling a witness they should attempt to provide that evidence to the court by way of affidavit material filed and served on the parties.

If the Separate Representative is seeking an alternative child protection order to that sought by the Department attention should be given to the development of an appropriate case plan which reflects the order sought by the Separate Representative.

The Separate Representative should serve all parties with their material. In the case of the Department the Separate Representative should serve any material on both the relevant Child Safety Service Centre and also the Court Services Unit.

The Separate Representative should ensure that the parties call all the relevant witnesses to ensure that the matter can be determined in the child's best interests. Where both parties refuse to call a relevant witness the Separate Representative should consider calling that witness on behalf of the Separate Representative.

Where the Separate Representative is calling a witness it is their responsibility to ensure the witnesses' attendance at the hearing.

It is the role of the Separate Representative to test the case of each of the parties at trial. In this regard it would be normal practice for the Separate Representative to cross examine all relevant witnesses regardless of whose case they are called in.

F27. Issuing of subpoenas

Any witness who is to receive a subpoena should be given advance notice of the subpoena and should be served as soon as possible. Attempts may be made to accommodate expert witnesses and the timing of their evidence where practical and the court should be made aware of any scheduling difficulties at the earliest opportunity.

F28. Preparation for trial

When preparing for trial, the Separate Representative should:

1. ensure an updated grant of aid
2. confirm Counsel for the trial – by letter setting out trial dates and fees payable pursuant to Legal Aid Scale of Fees
3. issue Subpoenas – together with conduct monies
4. inspect any material returned under subpoena on behalf of the other parties
5. inspect the Departmental file in its entirety
6. inform witnesses of trial dates and ensure they have a copy of their affidavits or evidence, that they are available for giving evidence and arrange times for their attendance for the purposes of cross examination to minimise waiting time
7. prepare objections to affidavits and documents to be tendered
8. liaise with the other parties/their practitioners for the preparation and filing of material in accordance with court directions
9. consider whether the matter is an appropriate matter to be dealt with on the papers for eg harm is admitted, the appropriate type of order has been agreed and the only issue in dispute is the length of the order
10. consider meeting with the child to advise them of the trial, how the trial will be conducted and the evidence that the Separate Representative will place before the court about the child's wishes.

F29. Trials

The role of the Separate Representative at the hearing includes:

- to test the evidence of the parties and their witnesses by cross examination
- to ensure all relevant evidence as to the welfare of the child is before the court
- to present the views and wishes of the child where they are able to be ascertained
- to facilitate negotiations wherever it is appropriate

- to make submissions based on the evidence before the court, highlighting the alternative orders open to the court on the evidence and proposing orders that, in the opinion of the Separate Representative, are in the best interests of the child.

F30. Attend the trial and instruct Counsel

While s105 of the CPA gives the court the ability to dispense with the rules of evidence the hearing of any contested matter in the Children's Court will normally follow the usual course of litigation. In this regard Separate Representatives should ensure that the Department presents its' case first and that during the proceedings objections to evidence are made in the usual way and in accordance with the accepted rules of evidence. The Magistrate can then indicate when the rules are to be dispensed with.

The Separate Representative should take accurate records of the proceedings including witness names and times of hearing. It is also recommended that during the course of the trial an adequate summary of questions and answers be maintained.

The Separate Representative is personally responsible for instructions to Counsel during the course of the proceedings.

F31. Appeals

Where a Separate Representative is served with a Notice of Appeal, an Application for Legal Aid should be forwarded to Legal Aid Queensland with sufficient information so that the merits of any appeal can be assessed.

F32. Provision of information to the child

Following the completion of any contested matter, or the making of orders agreed to bythe parties, the Separate Representative should consider whether it is appropriate to meet with the child and explain the outcome of the proceedings.

Where the Separate Representative deems it is appropriate they should consider how best to communicate this information to the child taking into consideration the child's age and ability to understand. In this regard it would be best practice for the Separate Representative to meet with the child in the presence of the report writer who can assist in the event that the child is unhappy with the outcome.

Where an order is made it may also be appropriate for the Separate Representative to provide information to the child on the child's rights in care and the standards of care that should be provided to the child by the Department.

a. Where appropriate the Separate Representative should also inform the child/children of their rights to commence proceedings in QCAT and provide an indication of which departmental decisions are open to review.

The child/children should also be informed of their right to apply to revoke or vary the order made should their circumstances or the circumstances of their parents change in the future.

Where the Separate Representative becomes aware that the child is eligible to apply for criminal compensation or to commence negligence or other proceedings arising from their time in care or the circumstances by which they came into care, then the Separate Representative should bring

these matters to the attention of the Department and, if they consider it appropriate, also to the attention of the child.

F33. Completion of the Separate Representative's role

The Separate Representative's role ends upon completion of the proceedings. If an application for appeal is lodged this may be upon the final determination of the appeal matter.

In exceptional circumstances a Separate Representative may be asked by the Department and the other parties to attend a further Family Group Meeting after the conclusion of proceedings. In those instances the Separate Representative should provide Legal Aid with sufficient information to determine the merits of funding any ongoing involvement of the Separate Representative.

The Separate Representative should also ensure that all accounts are finalised in a timely manner.

Part G – Case Management Standards specific to Child Protection

G1. Telephone instruction/advice

Information should be recorded when giving telephone advice as this will save the need for its repetition at a later time. The practitioner must be aware of and comply with the Best Practice Guidelines for Lawyers for working with clients who have experienced violence. A Copy of the Best Practice Guidelines are at **Annexure F**.

G2. Letter of introduction

Upon receipt of a relevant grant of aid the practitioner is to forward a letter to the client requesting an appointment be made.

G3. Initial interview

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

Administrative and legal requirements

a. ensure the client has the information sheet (**Annexure A**)

b. obtain full particulars of any other parties, including the nature of relationship, their dates of birth and current address

c. obtain full particulars of the Child Safety Service Centre involved with the client including details of the relevant Child Safety Officer

d. explain the practitioner's role, and the limitations of that role

e. explain the client's role

f. determine whether there are currently proceedings on foot, whether the proceedings are in the Children’s Court or QCAT and request copies of any documentation relevant to the matter

g. obtain a comprehensive account of the history of the intervention by the Department including details of any previous interaction with the Department in relation to this child or any other children of the client including whether the client has any other children who are or have been subject to a child protection order (be as specific as possible with these instructions)

h. obtain detailed instructions on the Department's protective concerns

i. obtain instructions on any actions the client has taken to address the protective concerns

j. obtain information on where the child/children are currently placed and whether there are any alternative placement options

k. ascertain whether the client or the child/children are Indigenous and whether a recognised entity is involved in the matter

l. ascertain whether there is a current case plan in place in relation to the child/children

m. ascertain whether there is an upcoming Family Group Meeting or Court Ordered Conference

n. ascertain whether a separate representative has been appointed in relation to the child/children

o. ascertain whether an interpreter will be required for subsequent attendances.

Non administrative or legal requirements

a. be prepared to work with or through interpreters, support workers and friends or family where appropriate, but be sure to encourage the client to participate to the greatest possible degree

b. be sympathetic to the emotions and concerns that the client may have, and be prepared to divert from the usual process if these emotions or concerns dictate

c. be familiar with other needs or issues that may need to be addressed such as, accommodation, counselling, financial support and be prepared to offer meaningful advice and support

d. be focused in your approach to obtaining sufficient information to properly represent the client, and do not allow the interview to become sidetracked (one hour should be set aside for the interviews, but may be extended if necessary)

e. in all written or verbal communications the practitioner should take care to adopt the Plain English guidelines.

G4. Inhouse precedent package

Where applicable it is expected that in house practitioners will use the relevant letters and documents contained in the precedent package.

G5. Completion of notice of Address for Service

If there are current proceedings on foot the practitioner should file a Notice of Address for Service in the relevant Children's Court registry.

The Notice of Address for Service should be served on all other parties. In the case of the Department, the practitioner should serve a copy of the Notice of Address for Service on both the relevant Child Safety Service Centre and also the Court Services Unit.

G6. Dealing with the Department

Communications with the Department should take the same form as with another party to the proceedings. It should also be taken into consideration that although a professional party in the proceedings, the Departmental person is unlikely to be legally represented until late in the proceedings. Particular care should be taken to accurately record the details of any conversations with the nominated officer or other Departmental person. The practitioner should consider confirming conversations with departmental officers in writing.

G7. Dealing with unrepresented parties

Communications with an unrepresented party should take the same form as with another legal practitioner. Particular care should be taken to accurately record the details of any conversations with the unrepresented party. The practitioner should consider sending a letter to the party confirming the details of the conversation.

G8. Family Group Meetings

S51L of the Child Protection Act (CPA) provides that parents may have a support person attend and participate in family group meeting on their behalf and that legal representatives can act in this role.

Subject to a grant of aid the practitioner should attend Family Group Meetings arranged by the Department during the term of the matter. Practitioners should alert their clients to the possibility of the practitioner attending Family Group Meetings with them and should encourage clients to provide the practitioner of notice of any Family Group Meetings. Family Group Meetings are used to provide families with information about the child and to negotiate the matters in dispute.

Practitioners should be mindful that matters discussed at Family Group Meetings are admissible in the court proceedings.

Attention should be given to the development of an appropriate case plan which reflects the client's capacity to engage with support, therapeutic or other services. If an earlier case plan is in existence consideration should also be given to the outcomes and goals which have already been achieved by the client and which do not need to be included in the new case plan. The practitioner may request that previous outcomes be included in the case plan with a notation that the goal has been achieved by the client.

Where a practitioner or the client does not agree with outcomes or actions proposed by the Department then they should ask the departmental staff to note that disagreement in the case plan document.

Practitioners should take care to ensure that the goals and outcomes listed in the case plan are achievable by the client and include some mechanism to measure the client's progress in achieving the case plan goals for example instead of an outcome which says the client will submit to drug testing the practitioner should push for an outcome which can be measured i.e. 5 clear drug tests in a 3 month period.

G9. Prior to each further court event

Prior to each court event the practitioner should:

1. obtain an appropriate grant of aid to attend
2. consider the possibility of settlement prior to the court event, consider the possibility of the client making no objection to the making of the order and consider filing a consent to the proposed order where appropriate
3. obtain from the client all relevant documentation
4. consider any necessary adjournment
5. consider whether or not an interim order in favour of the Department or other suitable person is necessary in the circumstances.

G10. Attending mentions

The legal practitioner should attend all court mentions of the matter in accordance with their grant of aid. If a practitioner is unable to attend court for a mention due to the court being in a remote area, the practitioner should notify the court, in writing, at least five working days prior to the court mention of their inability to attend and request arrangements be made for them to take part in the mention by telephone. If these arrangements are unable to be made, the practitioner must provide detailed written submissions to the court, and copies to each of the parties, prior to the mention of the matter. These submissions should include a reference to whether the client is agreeable to any interim orders in favour of the Department or other suitable person. The practitioner must also be contactable by telephone during the time of the mention.

G11. Applications for adjournments

From time to time the legal practitioner may need to request that a matter be adjourned. The legal practitioner should only make application for an adjournment if it is necessary for the efficient conduct in the case. The legal practitioner must be mindful that child protection matters should be dealt with as quickly as possible in the best interests of the child.

G12. Applications on adjournment

At each mention of the matter the practitioner should consider whether an application should be made to discharge any temporary orders in relation to the children, for example an order that the chief executive have interim custody of the children.

In considering such an application the practitioner should be mindful of any need to secure the child's protection during the adjournment period and whether an interim order is necessary to ensure the child's safety.

In the event that additional material in support of the client's position is available the practitioner should ensure that this material is placed before the court by way of affidavit and that the affidavit material is filed and served on all parties prior to the mention date. In the case of the Department, the practitioner should serve copies of the affidavit material on both the relevant Child Safety Service Centre and also the Court Services Unit.

The practitioner should also consider s67 & s68 of the CPA and whether application should be made for orders for:

a. a social assessment report

b. medical examination or treatment of the child

c. contact with the family during the adjournment period

d. the convening of a family group meeting

e. the convening of a court ordered conference

f. the appointment of a separate representative.

Consideration should be given to an order for the appointment of a separate representative if the facts of the case warrant such an order, if the matter is to be contested or if the Department are applying for a long term guardianship order in relation to the child/children. The role & responsibilities of the separate representative must be explained to the client and the obligations of the client must be discussed with them.

Prior to the day of the mention the practitioner should make contact with the relevant court to ascertain the applicable practices and procedures in that registry, for example, in some Children's Courts the Magistrate will require legal representatives to remain seated throughout any appearance.

On the day of the hearing, ensure attendance in a timely manner. The court will need to be advised of the material upon which the practitioner intends to rely to support their client's application. The practitioner will also be asked for the submissions which support their client's case. In this regard reference should be made to relevant sections of the CPA, relevant procedural rules and any material which has been filed in the matter.

When considering submissions, regard should be had to the matters referred to in ss 5, 9, 10, 59 and any other relevant sections of the CPA.

Following each mention the practitioner should advise the client in writing of the outcome and their rights and obligations as a result of any orders made by the court. The practitioner should also consider and provide advice in relation to any possible review or appeal of the decision. This advice should be confirmed in writing to the client and this advice should also advise of the next court date and the need for the client to attend. In due course the practitioner should provide the client with a sealed copy of any orders made.

The practitioner should ensure that copies of every order are received from the relevant registry and placed on their file.

G13. Consents and instructions

If the client makes a decision to consent to the proposed child protection order the practitioner should obtain the client's signed, dated and witnessed consent to the order. The practitioner should also 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.

G14. Court Ordered Conference

The purpose of the Court Ordered Conference is to decide the matters in dispute and to try to resolve them. The practitioner must, subject to a grant of legal aid, attend the Court Ordered Conference. At the discretion of the conference convenor the client may also have a support person in attendance.

At the Court Ordered Conference the practitioner should advise the parties of any prospects of settlement and assist in making recommendations for the future conduct of the case.

At the conclusion of the conference the convener will prepare a written report for the Magistrate on the outcome of the conference. This report is signed by the convener, the parties and legal representatives and placed on the court file. Practitioners should ensure they receive a copy of the report from the conference convenor.

Communications at a Court Ordered Conference are confidential and can only be used in court proceedings with the consent of all of the parties. If the practitioner wishes to advise the court of the content of communications at the Court Ordered Conference they should first obtain the consent of the relevant departmental officers and the separate representative if one has been appointed.

In the event that subsequent departmental material contains communications from the Court Ordered Conference representations should be made the Department that the affidavit material be withdrawn. In the event the material is not withdrawn then the practitioner should make an application to the court to disregard that material.

G15. Mention following the Court Ordered Conference

The matter will be mentioned again after the conclusion of the court ordered conference. The practitioner should use this court event to obtain orders by consent where this is possible.

In the event that the matter is contested the practitioner should use this mention to obtain directions for the preparation of the matter for trial.

Things to do to prepare for the mention:

1. letter to client to inform of mention date, request their attendance and explain the relevance of this court event

2. prepare a plan for the trial – What are the client’s instructions? What evidence is needed to support their application? How long will it take to prepare for trial? What experts are needed?

3. review the current case plan with the client and assess the evidence needed to support the client’s case and how to get that evidence before the court

4. ascertain whether the case plan has been filed by the Department

5. ascertain the review date for the current case plan and whether the case plan will still be current at the time of the trial or whether it needs to be reviewed

6. consider whether the matter is ready to proceed to trial

7. consider the likely number of witnesses and the length of trial – include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions

8. the need for expert witnesses and a social assessment report or an update to an existing report

9. speak to proposed Counsel and confirm date availability

10. canvass options for settlement

11. if the matter cannot be resolved request that it be set down for hearing

12. consider whether the matter is complex and should be listed before a specialist Children's Court Magistrate.

At the mention, the practitioner should seek directions for the preparation of the matter and filing dates for each party. The practitioner should seek that the Department file its material first and ensure that sufficient time is allowed for the client to file their material in response.

Immediately after the mention, aid should be sought on behalf of the client for the preparation of material for trial and attendance at the trial.

G16. Write to client advising of date of trial

Once a trial date has been obtained the practitioner should write to the client advising the trial dates and also any relevant timetable for the filing of material. The need for the client to attend and an explanation of any filing dates be provided to the client and confirmed in writing.

G17. Briefing counsel

Having consideration to the funding policy of LAQ, Counsel may be briefed to appear for complex matters.

G18. Departmental preparation for trial

Where matters are proceeding to a contested hearing the Department will usually engage crown law to appear at trial. Where crown law is not available the Department may engage members of the private bar.

Officially Counsel is instructed by the applicant for the child protection order. In practice the matter is usually prepared by the Court Coordinator in the local Child Safety Service Centre in conjunction with the relevant departmental officer in the Court Services Unit. The practitioner should liaise directly with those officers with regard to preparation of the matter for trial.

G19. Evidence and witnesses

Where a matter is contested evidence should be gathered and presented to the court by way of affidavit. Doctors' reports evidencing injuries, previous protection orders, and statements from witnesses may be necessary to support the client's application. Witnesses will need to be organised well in advance and the practitioner should attempt to speak with them prior to the hearing to determine what they will be able to say. Witness' evidence should be provided to the court by way of affidavit and filed and served on the parties. In the case of the Department the practitioner should serve copies of the affidavit material on both the relevant Child Safety Service Centre and also the Court Services Unit.

If the client's affidavit is lengthy the practitioner should prepare the material in draft and forward it to the client for perusal. Clear advice needs to be given to the client about swearing the affidavit and the implications of making false or misleading statements.

Practitioners should be aware of any relevant conditions which may prevent the client from adequately proofing affidavit material e.g. illiteracy, language difficulties or diminished cognitive functioning and the relevant jurat should be used in those circumstances.

If the client is seeking an alternative child protection order to that sought by the Department attention should be given to the development of an appropriate case plan which reflects the order sought by the client.

Practitioners should make endeavors for the Department to provide them with copies of the Departmental file material. The Department maintains both a paper file and an electronic file and practitioners should seek access to the documents contained on both parts of the file.

Where the Department refuses access to the file the practitioner should subpoena it.

G20. Issuing of subpoenas

Any witness who is to receive a subpoena should be given advance notice of the subpoena and should be served as soon as possible. Attempts may be made to accommodate expert witnesses and the timing of their evidence where practical and the court should be made aware of any problems at the earliest opportunity.

G21. Arrangements for court

Ensure appropriate arrangements have been made with the client for their appearance at court. If there are security or safety issues, it may be wise to meet the client at the office and accompany them to the court. In extreme cases the court staff and police may be informed of your concerns.

Check the client understands the procedure for the court attendance and is advised correctly in relation to the need to bring other witnesses or documentation. Allow for sufficient time to confer with your client and with the Department prior to court.

G22. Preparation for trial

When preparing for trial, the practitioner should:

1. ensure an updated grant of aid

2. inform the client in writing of the trial dates, confirming their need to attend along with their witnesses and steps taken in preparation for trial

3. confirm Counsel for the trial – by letter setting out trial dates and fees payable pursuant to Legal Aid Scale of Fees

4. issue Subpoenas - together with conduct monies

5. inspect any material returned under subpoena on behalf of the other parties

6. inform witnesses of trial dates and ensure they have a copy of their affidavits or evidence, that they are available for giving evidence and arrange times for their attendance for the purposes of cross examination to minimise waiting time

7. prepare objections to affidavits and documents to be tendered

8. advise the other parties which of their witnesses are required for cross examination

9. liaise with the other parties/their practitioners for the preparation and filing pursuant to court directions

10. consider whether the matter is an appropriate matter to be dealt with on the papers for e.g. harm is admitted, the appropriate type of order has been agreed and the only issue in dispute is the length of the order and this could be dealt with by way of submissions.

G23. Brief Counsel for trial

The practitioner should retain and brief Counsel as soon as practicable. The brief to Counsel must include all relevant court documentation including any trial plan, copies of any subpoenaed material available [or summary of same if necessary though copies of material should be sought if the matter is progressing to a trial] and copies of all relevant Departmental material.

Instructions to Counsel should set out the trial dates and court in which the proceedings are listed for hearing, the basic premise of the case, list the witnesses to be called by each party and a statement as to the relevance of that evidence and confirmation of fees payable pursuant to Legal Aid Scale of Fees.

G24. Conference with Counsel

The practitioner should consider the appropriateness of conferences with Counsel and arrange conferences with Counsel and the client as early as practicable.

G25. The court process

The practitioner should shield the client from any unnecessary conflict, or even contact with departmental officers if appropriate. The practitioner may negotiate with departmental officers and this may result in either a consent or an expression of a desire to contest. The practitioner should explain the negotiations to the client at all times and ensure that the client's position is not compromised in any way. Practitioners must seek instructions before agreeing to any orders.

The client should be prepared for the trial process including preparation for the giving of evidence and also cross examination.

G26. Attend at the hearing and instructing Counsel

While s105 of the CPA gives the court the ability to dispense with the rules of evidence the hearing of any contested matter should still follow the normal course of litigation. In this regard practitioners should ensure that the Department presents its case first and that during the proceedings objections to evidence are made in the usual way and in accordance with the accepted rules of evidence. The Magistrate can then indicate when the rules are to be dispensed with.

The practitioner should take accurate records of the proceedings including witness names and times of hearing. It is also recommended that during the course of the trial an adequate summary of questions and answers be maintained by the instructing solicitor.

G27. Appeals

In every case the practitioner should consider whether an appeal should be lodged. If the practitioner considers an appeal should be lodged they must discuss this option with the client. If a client wishes to appeal the practitioner should examine the merit and make a determination as to whether grounds of appeal exist.

Practitioners should be aware of the relevant time limits and observe them in all cases.

If the appeal is meritorious the practitioner must assist the client to complete and lodge the Notice of Appeal 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 any appeal can be assessed.

Inhouse practitioners must consult with their coordinator or the Family Law Consultant about the merits of the case before making an application for aid to appeal.

If an appeal is considered appropriate the practitioner should:

1. take instructions from the client
2. advise the client of the appeal process and possible outcomes
3. seek a grant of aid for obtaining an advice on appeal and assist the client in completing the Legal Aid Application Form
4. assist the client to complete and lodge the Notice of Appeal.

G28. Client care at the conclusion of the matter

After the matter is concluded the practitioner should write to the client informing them of the outcome and provide sealed copies of orders made and the reasons for judgment or advising of the expected date of Judgment if known.

Where a child protection order has been made, the practitioner should advise the client and confirm in writing their rights concerning proceedings in QCAT. In this regard the practitioner should provide an indication of which departmental decisions are open to review in that forum i.e.

a. decisions in relation to a supervision matter sated in a child protection order (s78 CPA)
b. decisions about placement of the child (s86(2) CPA)

c. a decision to withhold information from the parents about the child (s86(4) CPA)

d. restrictions on contact between the parent and the child (s87(2) CPA).

The client should also be informed of their right to apply to revoke or vary the order made should their circumstances or the circumstances of their child/children change in the future.

At the conclusion of the matter the practitioner should ensure all accounts are finalised in a timely manner.

Part H – Case Management Standards specific to Arbitration

H1. Letter of introduction

The practitioner should forward a letter to the client requesting an appointment be made within 7 days of notice that a grant of aid has issued for arbitration.

H2. Initial interview with client

The practitioner should advise the client generally in relation to sections 13, 72, 75, 79(4) and 90 of the Family Law Act relating to arbitration. The practitioner should advise the client what type of documentation will be required by the client for the arbitration process. The practitioner should advise the client of the process involved in the arbitration and advise of settlement options. The practitioner should have the client sign the Agreement to Arbitrate and return it to Legal Aid Queensland within 7 days of receipt of the Arbitration Pack.

H3. Documentation

The practitioner is to return to Legal Aid Queensland within 28 days of receipt of the Arbitration Pack, the Arbitration Statement in triplicate signed by the client. The practitioner is to return to Legal Aid Queensland a Response to Arbitration Statement in triplicate within 14 days receipt of the other party's Arbitration Statement. The Response to Arbitration Statement is necessary as it provides the opportunity to elect not to deliver oral submissions and assists in identifying issues or facts that are agreed or still in dispute. If these documents are voluminous, the practitioner may prepare them in draft and forward them to the client for perusal with a letter requesting that they arrange a further appointment for signature and advise of any changes to that appointment.

H4. Post award

The practitioner should forward a letter to the client requesting an appointment when the Arbitral Award is delivered to the practitioner. The practitioner should also prepare the Application for Consent Orders, to be signed by the client at this meeting. At the interview the practitioner is to explain the terms of the award to the client and answer any queries the client may have in relation to the award, and obtain from the client a copy of the marriage certificate. Where the other party refuses to sign consent orders the practitioner should also advise the client of the procedure necessary to seek registration of the award.

H5. Review process

The practitioner should consider the appropriateness of any award which has been made. If appropriate the practitioner should advise the client of options available to review that arbitral award.

Annexures

A. Client Information Sheet
B. Case Management Checklist – Family Law Practice
C. Guidelines for working with interpreters
D. Legal Aid Family Dispute Resolution Conference Supporting Documents
E. Legal Aid Family Dispute Resolution Conference Client Instruction Checklist – parenting orders/property
F. Best Practice Guidelines for lawyers working with clients who have experienced domestic and family violence
G. Legal Aid Family Dispute Resolution Solicitor Conference Assessment Sheet
H. Pre Action Procedure Checklist – Financial Matters
I. Pre Action Procedure Checklist – Parenting Matters
J. Subpoena Checklist – Family Court of Australia
K. Request for DNA Parentage Testing
L. Child Support Checklist
M. Advice Checklist
N. Factors relevant in determining parenting orders – Part VII Family Law Act
O. Subpoena Checklist – Federal Magistrates Court of Australia
P. Best Practice Guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients
Q. Suggested trial directions – Children's Court
R. Annexure R – Family Dispute Resolution Conference – Preparation Form (Property)

Document Effective: 1 August 2010

Document Sponsor: Coordinator, Preferred Supplier Strategy
Legal Aid Queensland
GPO Box 2449
BRISBANE QLD 4001

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
Case Management Checklist – Family Law practice

Stages	Yes	No	N/A
Grant of aid			
Initial letter to client			
Client Information Sheet and Costs Information in compliance with Chapter 19 FLRules			
Main purpose of FLRules explained to Client – Chp 1 FLRules & Chp 1.1 CMG/Rule 1.03 FMCRules			
Pre-Action Procedures explained and complied with - R1.05 FLRules FCT only			
Pre-Action Procedures explained and not applicable			
Notice of Address for service filed and served Form 6 – R8.05 FLRules/R 6.01 FMCRules			
Application and relevant affidavits and forms filed and served – refer to Chps 2 & 4 FLRules/ Part 4 FMCRules			
Applications in case and relevant affidavits and forms filed and served – refer to Chps 2 and 5 FLRules/ Part 4 FMCRules			
Urgent/Exparte Applications – Part 3.4 FLRules/Part 5 FMCRules			
Client informed of Duty of Disclosure – Chp 13 FLRules/Part 14 FMCRules			
Administrative Adjournment			
Response and Reply – refer to Chp 9 FLRules/Part 4 FMCRules			
Brochures to client – R2.03 FLRules – also applies in FMC			
Service – Chp 7 FLRules/Part 6 FMCRules			
Letters to other parties/solicitors/child			
Counselling session			
Negotiations			
Independent Children's Lawyer – role explained, questionnaires completed and returned			
Expert reports – Part 15.5 FLRulesPart 15, Divn 15.2 FMCRules Single Expert Witness – R15.44 to R15.50/Part 15, Divn 15.2 FMCRules Engaging own Expert • Permission from Ct R15.51-R15.52/Part 15, Divn 15.2 FMCRules • Instructions to Expert R15.53-R15.58/Part 15, Divn 15.2 FMCRules Conference of Experts if more than 1 R15.68 – R15.70			
Court Events: any adjournments – R12.14 Case Assessment Conference – R12.02 & R12.03 & Chp 5.2 CMG FCt [not up to date -2004 edition only available] Procedural Hearing/Mentions – R12.02 & 12.04 & Chp 5.3 CMG FCt [not up to date – 2004 edition only available] Part 10 FMCRules Conciliation Conference – R12.05 & 12.06 & Chp 5.4 CMG FCt [not up to date – 2004 edition only available] Court Directions complied with – both courts Client informed re Costs – Chp 19 FLRules/Chp 1 Part 21 FMCRules – costs generally Client informed of outcome of each event and obligations			
Offers to Settle – Chp 10 FLRules/FMCRules no specific rule but see Rule 1.05 FMCRules			
Subpoena issued Part 15.3 FLRules/FMCRules – checklist Annexure J FCt, checklist Annexure O FMC			
Documents from other Courts obtained R15.34 FLRules/no specific rule in FMC			
Trial Preparation completed – Part 16.2 FLRules/pursuant to directions of FMC			
Notes in relation to Trial retained on file			
Accounts paid			
Orders explained			
Appeal prospects consider and client advised appropriately			
Final letter to client			
Initial/ final contribution recovered			
LAOffice/final correspondence to LAQ requirements completed			

Practitioner: **Date:** / /

Annexure C
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) they should be provided with one.
- If a client does not ask for an interpreter, it may be difficult to assess if they need one. 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 professional 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 professional 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, take into consideration factors such as gender, ethnicity and dialect, literacy levels, hearing impairment or other communication difficulties. The client's comfort level 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-professional interpreters should not be used unless the situation is urgent and a professional 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 paraprofessional 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 professional interpreters in regional and rural Queensland is often limited to telephone interpreting through TIS Eastern, though 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.
- Complex interpreting work that may have serious implications for the client should be undertaken by the most qualified interpreter available.

Professional interpreters vs family and friends; bilingual staff as interpreters

- Friends and family members should not be used in the same role as professional 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.
- Communication may be distorted or changed because of:
  - lack of competence in English, particularly English used in a legal context
  - lack of competence in the client's first language
  - lack of interpreting skills
  - bias and lack of impartiality by the family member/friend. In many circumstances however the client may feel more comfortable with a family member or friend present, in addition to the professional interpreter.
- Professional 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 accredited interpreters may assist with communication with clients in certain circumstances. But as the general rule, professional 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 eg "non-professional interpreters may compromise or misinterpret important communication". Staff should advise clients that our policy is to use professional interpreters and emphasise this policy helps everyone involved in the communication process.

Arranging an interpreter

- Professional interpreting services can be accessed either over the phone (solely through TIS) or on-site, where the interpreter is physically present. Audio-visual access through videoconferencing networks is also possible.
- TIS is our translating and interpreting services preferred supplier. To arrange an interpreting service contact:
  - TIS on-site (face-to-face) interpreting. Pre-book by fax on 1300 654 151 with reasonable notice (generally 24 hours notice). Request forms for fax purposes are available from TIS. Follow the links from the multicultural resources page on the LAQ intranet.
  - Or book by phoning TIS on 1300 655 081. After hours access to TIS is through TIS Melbourne.
- TIS – telephone interpreting. Pre-book by fax on 1300 654 151 or by phoning 131 450 immediately. Pre-booked telephone interpreting jobs will incur a charge over and above the basic rate.
- 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 3556 1331 or phone 07 3356 8255 (office hours) or 1800 630 745 (after hours).
  - A list of NAATI accredited interpreters is available through the current NAATI Directory or from the NAATI Regional Officer, Brisbane on 07 3393 1358. The NAATI website address is: www.naati.com.au
  - The International Association of Conference Interpreters (AIIC) Australian members is available on 02 6633 7122.
  - Private interpreting and translating agencies are available through the Yellow Pages under "interpreters".

- Check the NAATI accreditation and qualifications of translators obtained through any source.
- Make your booking by giving 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 are important factors.

Paying for interpreting services

- Legal Aid Queensland is responsible for budgeting for and paying for interpreters. Clients do not have to pay for interpreters.
- A grant of aid for interpreting services can be requested from Legal Aid by either the applicant or the solicitor.
- 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 grants of aid.
- The TIS charging policy and rates are available from the Manager, TIS Eastern on 02 9258 4640.
- 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 an accredited interpreter at a distant site.
- Conference environments, where simultaneous interpreting is required in a number of languages, can be arranged using existing Queensland facilities.

Accountability

- Professionally accredited 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 the Manager, TIS Eastern on 02 9258 4640.

Skilling staff in working with interpreters

- The Queensland Interpreter Card Kit contains simple procedural checklists for working with interpreters and responding to the Queensland Interpreter Card. The kits are available from Legal Aid Queensland's Media and Public Affairs Unit.

Annexure D

Legal Aid Family Dispute Resolution Conference Supporting documents

1. Copies of any family court, FMS, state magistrate court orders with respect to the children.
2. Copies of any Protection Orders, Applications for Protection Orders and details of any breach of a Protection Order.
3. Copies of any Protective Supervision Orders, Care and Protection Orders and any other orders made in the Children's Court.
4. Copies of the results of any investigations conducted by the Department of Child Safety or the Police (JAB).
5. Copies of any family reports, psychological reports, psychiatric reports or medical reports which relate to a party or a child.
6. Market appraisal or valuation in writing of each parcel of real estate (including the former matrimonial home), listing the addresses and if possible a copy of the legal description which will appear on the Title Deed or Mortgage.
7. A copy of the Mortgage on your home and on any other real estate and the last Mortgage payment statement if you have it.
8. Copies of electricity, gas, council and water rates and other outgoings in relation to each parcel of real estate.
9. Savings, passbooks and investment certificates owned by you and your spouse.
10. Photocopy of current balance on deposit with any financial institutions including account number and in whose name the account is held.
11. Registration certificates for motor vehicles and boats owned by you or your spouse. If a registration certificate is not available, provide a full description of each vehicle.
12. Photocopies of front sheets of all life insurance policies with statements of loans against same, provide the company name and policy or group number for all health and medical insurance and obtain from the company a statement as to coverage for spouse and children.
13. Provide front sheets and schedules of all household insurance policies.
14. Latest annual certificates for your own and your spouse's superannuation policies or entitlements.
15. Inventory and an estimate of value of household furniture and furnishings and household contents. Household furniture should be given a secondhand value unless it is of an antique or special value.
16. If there is any interest in an estate provide a copy of the will and copies of accounts and correspondence evidencing distributions to you or your family. If there is a trust provide copy of a trust instrument and tax returns of the trust for the past 2 years.
17. Copy of share certificates and all other securities owned by you and your spouse, individually or jointly and name of broker or brokers. If you cannot obtain copies, provide the name of the companies, type of security and name of the broker with whom you do business.
18. A list of all outstanding bills owed by you and your spouse individually or jointly with copies of the most recent billings on the accounts.
19. If either spouse was previously divorced, details of their property settlement.
20. If you or your spouse have any interest in any business or partnership, please provide us with business tax returns, financial statements and assessments for the past 2 financial years.
21. Copies of your income tax returns and assessments for the past 3 financial years and a current wage slip or wage statement.
22. Copies of your spouse's income tax returns and assessments for the past 3 financial years and a current wage slip or statement if possible.
23. Copies of bank statements for the current and past 3 financial years.

Annexure E
Legal Aid Family Dispute Resolution Conference Client Instruction checklist

Parenting orders

1. Client details

Name:
Address:
Telephone: Work: Home:
Present occupation:
Date of birth:
Place of birth:
If born outside Australia year first entered Australia:
Citizenship:
Country of origin:
First language:

2. Other party's details

Name:
Address:
Telephone: Work: Home:
Present occupation:
Date of birth:
Place of birth:
If born outside Australia year first entered Australia:
Citizenship:
If represented: name of lawyer, address and telephone number:

3. Children

Names of children: Dates of birth: Where living:

Schools attended in grade level:
Housing supervision:
Health:
Time spent or communication with the child's parents and any other significant person:
Child support provided or paid:
Means of financial support:
Are there any proposals to change these arrangements?
Are there previous court orders?
Any pending court orders?
Any views expressed by any of the children?

The nature of the relationship of the child with each parent and any other extended family members or other significant persons.

Willingness and ability of client to facilitate and encourage a close and continuing relationship between the child and the other parent.

Affect upon the child of change in the child's circumstances.

Any practical difficulties and expenses of a child spending time or communicating with each parent.

The capacity of each parent to provide for the needs of the child to include any emotional or intellectual needs.

The child's background include any cultural or traditional values.

The need to protect the child from harm.

The existence of any domestic violence orders or any family violence.

4. Marriage details

Date of cohabitation commenced:

Date of marriage:

Place of marriage:

Where is the marriage certificate or birth certificate of children if not married:

Date of separation:

Circumstances surrounding separation:

Any resumption of cohabitation and periods of resumption:

Prospects of reconciliation.

Where the parties have resided since separation.

Have either parent re-partnered their current living arrangements and whether there are further dependent children.

5. Domestic violence

Has there been any form of domestic violence during the relationship and
If so, is there a current protection order in force and
When does it expire
Is there a need for arrangements to be made with the court
Does it impact on proposals for counselling.

Property settlement

1. Date and place of marriage
2. If not married, date of commencement of cohabitation
3. Dates and place of birth of each party
4. Periods of cohabitation before and after marriage
5. Date of final separation
6. Date of Decree Nisi - Absolute (if any)
7. Full particulars of the children to include names and ages and present living arrangements to include supervision, school, health, parenting arrangements and arrangements for financial support to include child support.
8. Contribution of each party to homemaking and caring for the children throughout the marriage.
9. The job training and experience of each party at the commencement of the marriage.
10. A complete work history of each party from the beginning of cohabitation to separation include account of income generating from such employment
11. The qualifications of each party currently for employment to include the health of each party.
12. Assets of each party at the commencement of cohabitation.
13. Details of the purchase of each significant asset acquired during the term of the marriage include particulars of:
    - date of acquisition
    - name of person in whose name it was held

- the purpose of acquisition
- cost
- how was it paid
- contribution to the cost of purchase by relative of a person
- improvements made to the assets during the period of ownership
- how the costs of such improvements were made
- if the asset was income producing, how the income was paid
- if the asset was not income producing the expenses of maintaining the asset and how they were met
- if the asset was disposed of, when and what was the sale price and what happened to the proceeds and if the asset was not disposed of what is its current position, who has control of it and what is its value.

14. Obtain details of any windfalls obtained by either party during the marriage, the extent of same and the source of same.
15. Details of any wasting of assets or any claim for assaults during the marriage for which compensation is required.
16. Which party's contribution to the occupation of the other e.g. entertaining, business clients.
17. Details of any business partnership, duration of the partnership and current position in relation to same.
18. Full details of any companies or trust in which either party or the children are involved.
19. A completion of the Form 17 in relation to present income, expenses, assets and liabilities and estimates of value.
20. Full details of all existing liabilities.
21. Whether other party is involved in a new relationship which impacts that person financially.
22. Future earning capacity of each party.
23. Full particulars of superannuation to include:
    - name of fund
    - name of company
    - extent of contribution by employee
    - contribution by employer
    - benefits payable upon ordinary retirement
    - early retirement
    - death
    - amount subject to preservation
    - whether there are any circumstances of hardship which may warrant an early payment.
24. Full details of all policies to include:
    - name of company
    - policy number
    - sum assured and maturity date
    - any taxation implications
    - any beneficiaries named
    - whether it has any value prior to surrender or any death or disability benefit attached.
25. In respect of partnerships, businesses and companies obtain full details to include name and address, nature of the business company or trust, names of partner – directors, shareholders, trustees, beneficiaries.
    Details of all assets held and any liabilities pertaining thereto. List of all benefits obtained from the business, company, trust by way of legal or equitable benefits.

Working with clients* who have experienced domestic and family violence

Best practice guidelines for lawyers

Legal Aid QUEENSLAND

July 2007

1. The safety of clients, children & workers is paramount

1.1 Identify if any domestic and family violence protection orders exist and if there have been any breaches. Record these details on the file

Practice points:

- Allocate extra time to investigate domestic and family violence allegations.
- Ask about behaviours rather than using terminology the client may not understand or relate to.

1.2 When seeing a client ask about and document on the file any potential safety or security issues

Practice points:

- Use the risk assessment pro-forma to decide what safety precautions are necessary for the client and yourself.
- Review the risk assessment during the key stages of the court process eg interim hearing, pre-hearing conference , before day one LATs or trial.

1.3 When preparing material for a court hearing ensure all allegations of domestic and family violence are included, where appropriate

Practice points:

- Consider attaching the domestic and family violence order or the application to the affidavit material.

1.4 Include all details of domestic and family violence when applying for legal aid

Practice points:

- Attach a copy of the domestic and family violence order or application. Consider if a Notice of Abuse or Family Violence [Form 4] is needed.

1.5 Take appropriate precautions for the client's safety

Practice points:

- Ensure the client will not see their ex-partner at your office.
- Always ensure there are no identifying documents/files left in view or accessible to the other parties at any time.
- Consider the logistics of getting your client to and from your office and court, and accompany them if necessary.
- Ensure clients use separate exits and arrive/leave at staggered intervals during a family law conference.
- Accompany your client to a conference or meet them at an independent place so they are not waiting to start a conference with their ex-partner.
- Ask for a separate room during a family law conference.
- Do not give out a client's address or that of their relatives or friends without their permission.
- Do not give out refuge contact telephone numbers or street address.
- If it is not safe to call a client at home, ensure this is recorded on the file.
- Let a court know well in advance about arrangements that may need to be made to keep your client safe at the court. Do this in writing if necessary.
- Familiarise yourself with the court safety procedures and protocols.
- If your client threatens the other party's safety or that of their solicitor, consider telephoning the other solicitor and when in doubt contact the Queensland Law Society's Lawcare for expert advice.

1.6 Take appropriate precautions for your own safety

Practice points:

- If you are seeing a client away from the office, arrange to call the office when you arrive and at another time such as when you are leaving.
- If you are working at a Legal Aid Queensland office, know where the distress buttons are in the conference and interview rooms.
- If you are working at a Legal Aid Queensland office and a physical incident occurs, complete a workplace health and safety incident report, notify Legal Aid Queensland and make a file note.
- If a client threatens you, notify Legal Aid Queensland or appropriate authorities or a colleague and make a file note.

2. Violence is a crime whether it occurs in public or in private

2.1 Give clients appropriate information about legal options to address domestic and family violence

Practice points:

- Tell clients domestic and family violence is a crime, whether it happened in public or in private.
- Give clients accurate and realistic information about their options to address the domestic and family violence.
- Make the distinction between the civil and criminal ramifications of a domestic and family violence order and explain this fully to the client.
- Assist the client to make a complaint to the police.
- Be aware of referral options for support services

Refer:

- Tell the client how to apply for a domestic and family violence order under the *Domestic and Family Violence Protection Act 1989* or make a complaint to the police under the Criminal Code 1899.

3. Actively involve clients in assessing their own legal needs and making decisions about their future

3.1 During the initial interview fully inform clients of the legal process

Practice points:

- Send a letter in plain English explaining the process when inviting a client to attend an interview.
- Provide appropriate written material to the client at the initial interview so they have something to take away and read.
- Always let the client make-up their own mind and provide them with enough information to assist them to make-up their own mind.

3.2 Do not put pressure on a client to agree to conditions in a conference if an agreement would jeopardise their safety and continue the domestic and family violence

Practice points:

- Do not pressure the client to make a decision in a conference or when organising a conference.
- Ensure clients understand they have the right not to agree to resolve the matter in a conference.
- Accept the client's decision even if this means there is no resolution.
- Raise all issues if you think it will help.
- Ensure the client has a full understanding of the agreement's terms and implications.
- Reality test agreements to ensure that they are workable. Place agreements in context, ask the client to think of possible scenarios to ensure they fully understand the agreement's possible ramifications.

3.3 When self-assessing a legal aid application, do not grant aid for a conference when there are domestic and family violence allegations

Practice points:

- Legal Aid Queensland's guidelines exclude conferences as an option where domestic and family violence is an issue and "where the power imbalance between the victim and the perpetrator is so great that the victim will be unable to negotiate effectively, even with the assistance of a solicitor".
- Ensure you ask the client about their ability to negotiate when you are discussing applying for aid.

4. It is important to work collaboratively with other services that support clients who have been affected by domestic and family violence

4.1 When giving legal information to clients also provide information about services that could address their other needs and those of their children

Practice points:

- Ensure you know or can find out about appropriate non-legal support and referral services and ensure this information is provided to the client, eg regional domestic and family violence services, refuges, sexual assault services, children's contact centres, Legal Aid Queensland database.

Continued over page...

** Clients are all parties to a dispute.*

Working with clients who have experienced domestic and family violence

Best practice guidelines for lawyers (continued...)

Legal Aid QUEENSLAND

July 2007

- If in doubt, contact a relevant Legal Aid Queensland specialist unit such as Women's Legal Aid, the domestic violence unit, family lawyers and the social work team.

4.2 When preparing a client's case, ensure there is appropriate liaison with the client's support networks

Practice points:

- If a client is seeing a counsellor or health professional, consider asking for a report from them if the client agrees, it would help your case and not breach their privacy.
- Make arrangements for a refuge worker or support worker to sit with the client when they are giving instructions or when they are appearing in court.

5. All clients should be treated with respect

5.1 Do not be judgemental in your response when interviewing clients and hearing their experience of domestic and family violence

Practice points:

- Listen, respond respectfully and behave sensitively when clarifying or asking for further details of alleged abuse or domestic and family violence or cultural practices.

5.2 Make reasonable attempts to locate evidence to support a client's allegations of domestic and family violence when representing a client at court

Practice points:

- Collect appropriate police reports, medical reports and statements from possible witnesses.
- Ensure you know each court's processes.
- When organising specialist reports check the background and experience of the people you engage.

6. Legal Aid Queensland services should be accessible and equitably delivered to all clients affected by domestic and family violence

6.1 When preparing for a conference or a court hearing, ensure cultural issues are addressed

Practice points:

- Do not make assumptions about a client based on their cultural background.
- If relevant, contact established migrant/refugee welfare services for cultural information or for support for a client, such as the Immigrant Women's Support Service (IWSS).
- Use the internet to get current international evidence on the political and social situation in other countries eg country reports.
- Contact established Indigenous welfare services for information about culture and for support for the client.
- Trained interpreters should be offered if you believe language is an issue.
- Legal Aid Queensland will fund interpreters.
- Always check that a client from a non-English-speaking background is comfortable to proceed without an interpreter, even if they have declined one on a previous occasion. Attempt to make the necessary arrangements so the conference can proceed, such as organising a telephone interpreter.
- If possible, use separate interpreters if both parties to a dispute are from non-English-speaking backgrounds, especially during shuttle conferences.
- Try to get an interpreter of the same gender as the client and check whether the client has any preference.
- Try to use the same interpreter every time.
- Allocate extra time in an interview if there will be an interpreter.
- Remember, domestic and family violence has an impact whatever the case involved.
- Where appropriate, try to talk with other people involved in the case such as doctors, health professionals, caseworkers and carers and where necessary apply for aid for a specialist report.

7. Develop & maintain your knowledge of the social context of domestic and family violence including power, control and gender

7.1 Have a knowledge of the relevant sociological, psychological and political perspectives explaining domestic and family violence in the home

Practice points:

- Ensure you are informed about the current theoretical perspectives on domestic and family violence against women and children.
- Attend relevant professional development opportunities to keep your knowledge base current.
- Engage report writers and professionals that have a knowledge of the current sociological, psychological and political perspectives explaining domestic and family violence in the home where there are domestic violence allegations.

Notes:

Annexure G
Confidential – Solicitor Conference Assessment Sheet

CONFIDENTIAL - SOLICITOR CONFERENCE ASSESSMENT SHEET

IMPORTANT NOTES:
- **This Assessment Sheet must be returned at least 2 days prior to the conference date.**
- **Please complete this form in accordance with your client's instructions where applicable.**

Client Name: File Reference:

Please provide the names of all other person(s) involved

Name…….. Name……

Children of current and previous relationships

Name	Date of Birth	With whom do they reside

Supply further details on additional sheets if necessary.

Legal Proceedings

1. Are there any current orders/parenting plans/written agreements/ verbal agreements between the parties? Yes/No
(*Provide copies with this assessment sheet)*
……
……

2. Have legal proceedings been initiated about this present dispute? Yes/No
If yes, type of application, court and next court date
……

3. Is there/has there been an Independent Children's Lawyer involved in this matter? Yes/No
If yes, what is their name?
……

4. Has an Independent Children's Lawyer obtained a family report? Yes/No
(If yes, please attach a copy)

5. Is there any current involvement with a child welfare authority? Yes/No
If yes, give details: *(Include details of area office, case worker and outcome if known)*
……
……

6. Are there any current Dept of Communities (Child Safety Services) orders in place? Yes/No
A copy of any current Child Protection orders is attached Yes/No
……

7. Are there any criminal convictions or charges relevant to the dispute? Yes/No
If yes, give details:
……

8. Are there any outstanding financial issues? Yes/No
If yes, give details:
……
……

Domestic and Family Violence

1.	Does your client have a current Protection Order? *Current Domestic Violence Order is attached* *Domestic Violence Consent Form signed by my client is attached*	Yes/No Yes/No Yes/No/NA
2.	Have there been any breaches of a Protection order? If yes, give details: …… ……	Yes/No
3.	Is your client currently fearful of their former partner?	Yes/No
4.	What is currently occurring between the parties that is causing your client to be fearful of their former partner? …… …… ……	

Issues for discussion at the conference

1. As far as possible please define the issues raised by your client that your client wishes to discuss at the conference. For example:

   Parental responsibility:
   Exchange of information:
   Living arrangements for the children:
   Specific issues:
   Collection and delivery:
   Other: ……

2. Please document briefly, possible initial proposals that your client may wish to put to the other party at the conference.
   ……
   ……
   ……
   ……

3. Is the other party aware of these issues? Yes/No
   If not, why not? ……
   ……

4. Does your client agree to these proposals being forwarded to the other party prior to the conference commencing? Yes/No

Solicitor's Recommendation

1. Does your client have special needs? Yes/No

2. What is your assessment of your client's ability to effectively participate in the mediation process?
   ……
   ……

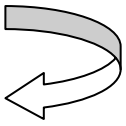
3. The matter does not fall within the exceptions to compulsory family dispute resolution as provided in s60I(9) of theFLAct. Yes/No

I have provided my client with reconciliation material, if relevant	Yes/ No
I have provided my client with prescribed information under S12E of the FLA	Yes/ No
I wish to receive a copy of my client's assessment sheet	Yes/ No
I have fully explained the conference process to my client	Yes/ No
I have discussed with my client the relevant principles of the legislation	Yes/ No
My client understands that the conference process is a facilitated child focused process	Yes/ No

Signed ……
Date ……

Please supply any additional information you feel is relevant to your client's case, their safety and any other issue you feel is relevant:

Continued overleaf



- If you have any questions please contact the conference organiser on **(07) 3238 3500** or attend at any office of Legal Aid Queensland.
- It is important to return this form no later than 2 clear days before the scheduled start of your client's conference.

Annexure H
Pre-action procedures checklist – financial matters

It is expected by the court that a party will not start the case unless: the respondent does not respond in time to the notice of offer as indicated in PAPs or agreement can't be reached after reasonable attempt to settle by correspondence made.

	Completed	Not required
1. **Do the PAPs need to be complied with?** **No** if the case involves allegations of family violence or fraud if application is urgent if applicant would be unduly prejudiced (need to establish this) same cause of action in previous application within 12 months divorce CS application/appeal **Court may accept non-compliance if:** the matter is genuinely intractable (need to satisfy the court) the matter is one in which a party would be unduly prejudiced or adversely affected if notice is given to another person in the dispute of intent to file time limitation is close to expiring.		
2. **Compliance** a. give a copy of the PAPs to the other parties b. make inquiries about FDR services available invite o/ps to FDR with identified person/organisation; to one to be agreed upon.		
3. **What your client must do** a. cooperate on agreeing on appropriate PDR service b. make genuine effort to resolve dispute through PDR.		
4. **Before filing – applicant must** Give other parties written notice of intention to start case if a. no appropriate FDR service available b. a party fails/ refuses to use FDR, or c. no agreement through FDR Form of notice: i set out issues ii set out orders to be sought iii set out genuine offer to resolve iv set out time within which (at least 14 days) to respond.		
5. **Respondent must** Within the time period in the Notice from the applicant – i reply in writing – stating if offer accepted or not If not accept offer – then also state: ii issues in dispute iii order they will seek iv genuine counter-offer to resolve v nominate time for applicant to respond.		

	Completed	Not required
6. **Disclosure requirements – (duty to disclose – refer to R13.12 and any order made)** a. has the client been advised to make full and frank disclosure of all information relevant to the issues and the use to which the documents produced may be put? b. asap – the following documents to be exchanged: Schedule of assets, income and liabilities; list of documents in party's possession/control relevant to issues; copy of any document required by o/p identified by ref to the list of documents. c. All relevant documents relating to maintenance have been included in the list of documents and exchanged (refer to 4(5)(a) – PAPs) d. all relevant documents relating to property settlement have been included in the list of documents and exchanged (refer 4(5)(b) – PAPs) e. is it practical to request another party to give an authority for a 3rd party to produce documents?		
7. **Expert witnesses** Is an expert witness to be involved – has the client been informed of the Rules relating to expert witnesses?		
8. **Solicitor's obligations – should be undertaken to the best of your ability but they do not override your duty to your client** **Must** a. advise client of ways to resolve without legal action b. advise client of their duty of full and frank disclosure and consequences of breaching it c. endeavour to settle dispute – provided it is in best interests of client and any child d. tell client if a compromise/settlement is in their best interests e. explain any unexpected delays in a matter and how client may assist to resolve the delay if possible f. advise client of estimate of costs of legal action – R19.03 FLRules/chp 1 Part 21 FMCRules g. advise client of factors that may be considered in orders for costs h. give client documents prepared by court re legal aid assistance, FDR, and legal, social and consequences for children of litigation i. discourage client from ambit claims or orders that the evidence/established principles of law indicate are not reasonably achievable * if client refuses to comply with the rules/refuses to disclose a fact or document relevant to the case – you must consider your duty and obligations as an officer of the court.		

Annexure I
Pre-action procedures checklist – parenting cases

It is expected by the court that a party will not start the case unless: the respondent does not respond in time to the notice of offer as indicated in PAPs or agreement can't be reached after reasonable attempt to settle by correspondence made.

This checklist applies to all applications for parenting orders commenced in all courts (including the Federal Magistrates Court) exercising jurisdiction under the Family Law Act.

Legal practitioners must also comply with the obligations detailed in the family law advice checklist.

	Completed	Not required
1. **Do the PAPs need to be complied with?** **No** if the case involves allegations of family violence or child abuse if application is urgent if applicant would be unduly prejudiced (need to establish this) same cause of action in previous application within 12 months divorce CS application/appeal **Court may accept non-compliance if:** the matter is genuinely intractable (need to satisfy the court) the matter is one in which a party would be unduly prejudiced or adversely affected if notice is given to another person in the dispute of intent to file.		
2. **Before filing – compliance** a. give a copy of the PAPs to the other parties b. make inquiries about FDR services available invite other parties to FDR with identified person/organisation to one to be agreed upon.		
3. **What your client must do** j. cooperate on agreeing on appropriate FDR service k. make genuine effort to resolve dispute through FDR.		
4. **Before filing – applicant must** Give other parties written notice of intention to start case if l. no appropriate FDR service available m. a party fails/ refuses to use FDR, or n. no agreement through FDR Form of notice: v set out issues vi set out orders to be sought vii set out genuine offer to resolve viii set out time within which (at least 14 days) to respond.		
5. **Respondent must** Within the time period in the Notice from the applicant – vi reply in writing – stating if offer accepted or not If not accept offer – then also state: vii issues in dispute viii order they will seek ix genuine counter-offer to resolve x nominate time for applicant to respond (at least 14 days).		

	Completed	Not required
6. **Disclosure requirements – (duty to disclose – refer to R13.12 and any order made)** a. has the client been advised to make full and frank disclosure of all information and documents relevant to the issues and the use to which the documents produced may be put? ? – ie only to be used in proceedings as stipulated in PAPs b. asap and if appropriate – at time of giving notices etc above – the following documents to be exchanged: medical reports, school reports, letters, drawings, photographs etc – documents in their possession or control relevant to the issues in dispute.		
7. **Expert witnesses** Is an expert witness to be involved – has the client been informed of the Rules relating to expert witnesses?		
8. **Solicitor's obligations – should be undertaken to the best of your ability but they do not override your duty to your client** **Must** c. advise client of ways to resolve without legal action d. advise client of their duty of full and frank disclosure and consequences of breaching it e. endeavour to settle dispute – provided it is in best interests of client and any child f. tell client if a compromise/settlement is in their best interests g. explain any unexpected delays in a matter and how client may assist to resolve the delay if possible h. advise client of estimate of costs of legal action – R19.03 FLRules/chp 1 part 21 FMCRules i. advise client of factors that may be considered in orders for costs j. give client documents prepared by court re legal aid assistance, FDR, and legal, social and consequences for children of litigation k. discourage client from ambit claims or orders that the evidence/ established principles of law indicate are not reasonably achievable * if client refuses to comply with the rules/refuses to disclose a fact or document relevant to the case – you must consider your duty and obligations as an officer of the court.		

Annexure J
Subpoenas checklist– Family Court of Australia

Part 15.3 FLRules – generally
Note for Division 12A matters – Rule 16A 08 applies
Note – Consideration should be given to whether or not an order under S69ZW has been made or should be sought instead of the subpoena.

	Documents	Service	Completed
1. **To produce documents** **Timing – at least 7 days before court date** a. **can issue – if not LAT - final orders only sought - once** trial date set or after trial directions R15.19 b. **can issue – if application in a case filed – once** hearing date is set c. **can issue – if divorce filed – once** hearing date is set d. **can issue – if appeal filed – once** hearing date is set e. **can issue – LAT – with leave of the court only R16A.08** **Limit does not apply to Independent Children's Lawyers.** **Format** a. identify documents clearly. b. identify date, time and place for production can require production before date for trial.	**Form 14** **Cheque –** min $10 but must be enough to meet reasonable expense to comply. As a general guide (and subject to change): Dept of Children's Services NSW $55 + $$ if a lot of material Dept of Communities (Child Safety Services) Qld $65 Qld Police Service $67 if not urgent Commissioner of Police NSW $67 if served with 14 days notice and $82 if less than 14 days. Dept of Education $63 Standard Fees - $55 **Brochure –** Subpoena (information for named person) **Notice R15.30** (if you wish to use rule for auto inspection and copy)	**Named person** All documents by hand *if you make other arrangements by consent and documents not produced – no warrant as not served properly.* **Other parties and Independent Children's Lawyer** Copy of Subpoena and R15.30 Notice to be served by ordinary service (post /fax to address for service is sufficient – Rule 7.12)	
2. **To give evidence –** **Timing –** a. **Can issue – If not LAT final orders only sought - once** Trial date set or after Trial directions R15.19 b. **Can issue – if application in a case filed – once:** hearing date is set c. **Can issue – if divorce filed – once:** hearing date is set d. **Can issue – if Appeal filed – once:** hearing date is set e. **Can Issue – LAT – with leave of the court only R16A.08** **Limit does not apply to Independent Children's Lawyers.** **Format** a. identify the person to whom it is directed by name or description of office. **Conduct money and witness Fees – see next column** Note – R15.23 sets out reimbursement provision if substantial loss or expense for witness in addition to these payments.	**Form 14** **Cheque –** for witness to attend court $85 1. conduct money = enough to meet reasonable expense to comply – min $10 for conduct but also entitled to travel and accommodation and meals –Sch 4, and 2. witness fees $75 per day min and extra for experts. - Sch 4 FL Rules as a guide.	**Named person** All documents by hand *if you make other arrangements by consent and documents not produced – no warrant as not served properly.*	

* If subpoena is to give evidence and produce documents – cover both of the above scenarios at the same time.

Annexure K

Request for DNA parentage testing pursuant to a grant of legal aid

Date:	**LAQ file no:**
File manager/ solicitor:	**Phone:**
Address:	

Please arrange for paternity testing in this matter. Legal aid has been granted for this purpose.

Client's name:	**Client's date of birth:**
Home address:	
Child's name:	**Child's date of birth:**
Home address:	
Appointment date:	
Venue location:	
Name of other party:	**Other party's date of birth:**
Home address:	
Appointment date:	
Venue location:	
Note: Include specific instructions for appointment times.	

Signature of file manager/ solicitor: _____

This form should be sent to the laboratory when requesting parentage testing services where legal aid has been granted for that purpose.

Annexure L
Child support checklist

Action	
Child support referral form – signed by LAQ	
Copy of relevant documents on file: • Birth/marriage certificate, decree absolute or current order • Rejection/objection letter • Signed declaration of paternity	
Statutory time limitations noted	
Initial letter to client	
Client information sheet sent	
Negotiating letter(s) to the other party	
Copies of relevant letters and documents to client	
DNA testing (if required)	
Drawing of necessary documents	
Court dates noted on file	
Orders/directions complied with	
Legal aid notice forwarded	
Orders explained	
Appeal rights advised	
Exhibits etc secure and attached	
Final letters CSA/ client/ Centrelink/ other party	
Client's photos and original documents returned	
Completed LAQ requirements	
Comments:	
Practitioner:	Date: / /

Annexure M
Advice checklist

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* which commenced on 1 July 2006 places obligations upon legal practitioners providing clients with representation advice or assistance in family law matters.

The pre-action procedures contained in Schedule 1 of the *Family Law Rules 2004* must also be complied with (see pre-action procedures checklists).

Family Law Advice Checklist – (post 1 July 2006)

	Completed	Not required
Section 63DA(1) If **giving advice or assistance** in relation to **parental responsibility** for a child following the breakdown of a relationship, the legal adviser must: ❑ Inform client that they could consider entering into a parenting plan in relation to the child; ❑ Inform client about where they can get further assistance to develop a parenting plan and the content of the plan. (Includes Legal Aid Family Dispute Resolution conferencing) Notes – 1. Section 61DA – When making a parenting order the court must apply a presumption that it is in the best interests of the child for the child's parents to have **equal shared parental responsibility** (ESPR) for the child – the presumption relates solely to the allocation of parental responsibility as defined in Section 61B. It does not provide for a presumption about the amount of time the child spends with each parent (see Section 65DAA below). The presumption: • does not apply if there are reasonable grounds to believe that a parent or a person who lives with a parent has engaged in abuse of the child or another child who at the time was a member of the parent's or other person's family or family violence • is rebutted by evidence that satisfies the court that it is not in the child's best interests for the parents to have ESPR for the child • when making an interim order, the presumption applies unless the court considers that it would not be appropriate for the presumption to be applied when making the order • in making a final parenting order the court must disregard the allocation of parental responsibility made in the interim order (Section 61DB). 2. Section 65DAA(1) – If a parenting order provides that a child's parents are to have ESPR for the child the court must: • consider whether the child spending equal time with each of the parents would be in the best interests of the child (eg Section 60CC(3) – willingness and ability of the parents to facilitate and encourage a close and continuing relationship between the child and the other parent, attitude to the child and to the responsibilities of parenthood), and • consider whether the child spending equal time with each of the parents is reasonably practicable - Section 65DAA(5) – distance, parents' current and future capacity to implement and communicate, impact on child and "other", and • if it is, consider making an order for the child to spend equal time with each of the parents		

	Completed	Not required
Section 65DAA(2) - If a parenting order provides that a child's parents are to have ESPR for the child and the court does not make an order for equal time, the court must: • consider whether the child spending substantial and significant time with each of the parents would be in the child's best interests • consider whether the child spending substantial and significant time with each of the parents is reasonably practicable, and • if it is, consider making an order to provide for the child to spend substantial and significant time with each of the parents. (see Section 65DAA (3) below): Section 65DAA(3) – A child will be taken to spend substantial and significant time with a parent only if: • the time the child spends with the parent includes both days that fall on weekends and holidays and days that do not, and • the time the child spends with the party allows the parent to be involved in the child's daily routine and occasions and events that are of particular significance to the child, and • the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent. The court is not limited to the above considerations when determining what is substantial and significant time. 3. The family dispute resolution requirements (pre-action procedures) imposed by the *Family Law Rules 2004* will continue to apply to proceedings commenced in the Family Court. After 1 July 2006 they will also apply to applications for **parenting** orders to all courts, including the Federal Magistrates Court. See pre-action procedure checklist for exceptions to compliance with family dispute resolution requirements – family violence, urgency etc.		
Section 63DA(2) If **giving advice in connection with** the making of a **parenting plan**, the legal adviser must: ❑ Inform client that if the child spending equal time with the parties is reasonably practicable and in the best interests of the child, they **could** consider the option of an arrangement of that kind. The legal adviser **may**, but is not obliged to, advise the client as to whether that option would be appropriate in the circumstances: "reasonably practicable" – Section 65DAA(5) – distance, parents' current and future capacity to implement and communicate, impact on child and "other" "in best interests of child" – Section 60CC – eg willingness and ability of parents to facilitate, encourage close and continuing relationship between child and other parent; attitude to the child and responsibilities of parenthood demonstrated by parents. ❑ Inform client that if the child spending equal time with the parties is not reasonably practicable or is not in the best interests of the child, but the child spending substantial and significant time with each of them is, they **could** consider the option of an arrangement of that kind. The legal adviser **may**, but is not obliged to, advise the client as to whether that option would be appropriate in the circumstances. See notes above regarding what is "substantial and significant time" – Sections 65DAA(3). Also, Section 63DA(3)		

❑ Inform client that decisions made in developing parenting plans should be made in the best interests of the child ❑ Inform them of the matters that may be dealt with in a parenting plan – • the person/s with whom the child will live/the time the child will spend with another person/how the child will have communication with another person • allocation of parental responsibility including the responsibility for making decisions about major long-term issues in relation to the child (includes education, religion, health, the child's name, and changes to the child's living arrangements that make it significantly more difficult for the child to spent time with the parent) • if parental responsibility is shared, the form of consultation which will occur between the persons sharing the responsibility (eg letter/telephone/email) • maintenance of a child (subject to the provisions of the *Child Support (Assessment) Act 1989*) • the process to be used for resolving disputes about the terms and operation of the plan • the process to be used for changing the plan if there is a change of circumstances • any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for the child. ❑ Inform them that if there is a parenting order in force in relation to the child, the order may (because of section 64D) include provision that the order is subject to a parenting plan they enter into. Note – Section 64D – A parenting order is taken to include a provision that the order is subject to a parenting plan that is entered into subsequently by the child's parents AND agreed to in writing by any other person (other than the child) to whom the parenting order applies. The court may in exceptional circumstances include provision in a parenting order that the order may only be varied by a subsequent order of the court and not by a parenting plan. Exceptional circumstances include the following: • where there is a need to protect the child from physical or psychological harm from being subjected to or exposed to, abuse, neglect or family violence • the existence of substantial evidence that one of the child's parents is likely to seek to use coercion or duress to gain the agreement of the other parent to a parenting plan. ❑ Inform them about the desirability of including in the plan: • provision about how the parties will consult (letter, telephone, email etc) if the parties share parental responsibility for a child • provision about how the parties will resolve disputes about the terms and operation of the plan • provision about the process for changing the plan if there is a change of circumstances. ❑ Explain to them in language they are likely to readily understand, the availability of programs to help people who experience difficulties in complying with the parenting plan. ❑ Inform them that the court is required to have regard to the terms of the most recent parenting plan when making a parenting order if it is in the child's best interests to do so. (A parenting plan is not registrable or enforceable but a parenting order is to be read as being subject to a subsequent parenting plan and a parenting plan may be a defence to a contravention application.)		

Notes – 1. Sections 61DA, 65DAA – see notes above – presumption of ESPR and the matters the court MUST consider if the presumption applies. 2. The dispute resolution requirements (pre-action procedures) imposed by the *Family Law Rules 2004* will continue to apply to proceedings commenced in the Family Court. After 1 July 2006 they will also apply to applications for **parenting orders** to all courts, including the Federal Magistrates Court. See pre-action procedure checklist for exceptions to compliance with dispute resolution requirements – family violence, urgency etc.		
Section 12E(1) If **consulted by** a person who is **considering instituting proceedings under the Family Law Act** a legal practitioner must give the person prescribed information about non-court based family services and the court's process and services: • as prescribed by the regulations • including information about the legal and possible social effects (including effects on children) of the proposed proceedings, the services provided by family counsellors and Family Dispute Resolution Practitioners, the steps involved in the proposed proceedings, the role of the family consultant, and the arbitration facilities available to arbitrate disputes in relation to separation and divorce. Note – The legal practitioner does not have to comply with this obligation if he/she has reasonable grounds to believe that the person has already been given documents containing this information. (Section 12E(4))		
Section 12E(2) If **consulted by** or **representing** a married person who is a party to **proceedings for divorce or financial or Part VII proceedings** in relation to the marriage, the legal practitioner must give the person documents containing information as prescribed in the regulations relating to services available to help with a reconciliation between the parties. Note – Not required if the practitioner has reasonable grounds to believe that the person has already been given documents containing this information (Section 12E(4)) or if the practitioner considers that there is no reasonable possibility of a reconciliation. (Section 12E(5)).		
Section 12E(3) If **representing** a party in **proceedings under Part VII,** a legal practitioner must give the party documents containing information: • as prescribed in the regulations for persons involved in proceedings under Part VII • including information about the family counselling services available to assist the parties, and the child or children concerned, to adjust to the consequences of orders under Part VII. Notes: 1. Not required if the practitioner has reasonable grounds to believe that the person has already been given documents containing this information (Section 12E(4)) 2. A legal practitioner dealing with people involved in Part VII proceedings must also comply with the information giving obligations detailed above.		

Annexure N
Factors relevant in determining parenting orders – Part VII Family Law Act

The court will consider the objects and principles of the Family Law Act.

The **objects** are to:

a. ensure that children have the benefit of both parents having a meaningful involvement in the child's life to the maximum extent consistent with the child's best interests
b. protect the child from physical or psychological harm from exposure to abuse, neglect or family violence
c. ensure the child receives adequate and proper parenting to help them achieve their full potential, and
d. ensure parents fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children.

The **principles** are, unless contrary to the child's best interests:

a. the child has the right to know and be cared for by both parents, regardless of whether the parents are married, separated, have never married or have never lived together
b. the child has a right to spend time and communicate on a regular basis with both parents and other significant to their care, welfare and development
c. the child has a right to enjoy their culture (including right to enjoy it with others who share that culture and for Aboriginal and Torres Strait Islander child, the right to maintain a connection with that culture and to have support, opportunity and encouragement to explore the full extent of the culture consistent with the child's age, level of development and the child's views and to develop a positive appreciation of that culture
d. parents jointly share duties and responsibilities concerning the care, welfare and development of the child, and
e. parents should agree about the future parenting of the child.

Best interests are paramount consideration

The court must regard the best interests of the child as the paramount consideration.

Presumption of Equal Shared Parental Responsibility

The court must also apply a **presumption** that it is in the best interests of the child for the child's parents to have equal shared parental responsibility. The presumption does **not** say that it is in the best interests of the child to spend equal time with each parent.

The **presumption will not apply** if there are reasonable grounds to believe that a parent or someone who lives with a parent, has engaged in abuse of the child or any other child in their family (or the other person's family) or engaged in family violence.

The **presumption is rebuttable** by evidence that satisfies the court that it would not be in the best interests of the child for the parents to have equal shared parental responsibility for the child.

If at an interim hearing, the court made an order allocating parental responsibility, the court at a final hearing must disregard that interim order.

Consequences of Order for Equal Shared Parental Responsibility

If an order is made for equal shared parental responsibility, the court **must consider** if the child spending equal time with each parent is:

1. in the child's best interests, and
2. if it is reasonably practicable.

If the court agrees that 1 and 2 apply, **then** the court **must consider** making an order for the child to spend equal time with each parent.

If an order is made for equal shared parental responsibility and the court does not make an order for equal time, **then** the court **must consider** if the child spending substantial and significant time with each parent is:

3. in the child's best interests, and
4. if it is reasonably practicable.

If the court agrees that 3 and 4 apply, **then** the court **must consider** making an order for the child to spend substantial and significant time with each parent.

Consequence of making an Order for Shared Parental Responsibility

If an order is made for the sharing of parental responsibility and the exercise of that responsibility involves making a decision about a major long-term issue in relation to a child **then** the order is taken to require a joint decision and to require each person with that responsibility to consult with the other(s) and make a genuine effort to come to a joint decision about that issue. There is no need however for consultation about issues that are not major long-term issues.

Factors relevant in determining the Best Interest of the Child – S60 CC

In determining what is in the child's best interests, the court must consider the matters set out in S60CC.

Primary considerations:

- The benefit to the child of having a meaningful relationship with both the parents, and
- The need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse neglect or family violence.

Additional considerations:

- any views expressed by the child and any factors (such as to the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views.
  - the nature of the relationship of the child with each of the child's parents and with other persons (including grandparents and other relatives)
- the willingness and ability of each parent to facilitate, and encourage, a close and continuing relationship between the child and the other parent.
- the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
  - either of his/her parents; or
  - any other child, person, with whom he or she has been living;
- the practical difficulty and expense of a child spending time with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and spend direct time with both on a regular basis;
- the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;
- the child's maturity, sex and background (including lifestyle, culture and traditions) of the child and of either parent and any other characteristics of the child that the court thinks are relevant;
- if the child is an Aboriginal child or a Torres Strait Islander child, the child's right to enjoy their culture (including the right to enjoy that culture with other people who share that culture) and the likely impact any proposed parenting order on that right. This includes the right of the child to maintain a connection with that culture and to have the support opportunity and encouragement

necessary to explore the full extent of that culture, consistent with the child's age, level of development and views and to develop a positive appreciation of that culture.

- The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- any family violence involving the child or a member of the child's family;
- any family violence order that applies to the child or a member of the child's family, if the order is final or the making of the order was contested by a person
- whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- any other fact or circumstance that the court thinks is relevant.

Other considerations:

- The extent to which each parent has fulfilled or failed to fulfil their responsibilities as a parent.
- In particular – the court must consider if each parent has:
    - taken or failed to take the opportunity to participate in making decisions about major long-term issues regarding the child
    - spent with the child
    - communicated with the child
    - facilitated or failed to facilitate the other parent participating in making decisions about major long-term issues , spending time or communicating with the child
    - fulfilled or failed to fulfil their obligations to maintain the child.
- The events that have happened and circumstances that have existed since separation.

Annexure O

Subpoenas – checklist – Federal Magistrates Court of Australia – Chp 1 Part 15A FMC Rules

Note: Consideration should be given to whether or not an order under S69ZW has been made or should be sought instead of the subpoena.

	Documents	Service	Completed
To produce documents or to attend and give evidence or both **Timing – Rule 15A.04 For production of documents – at least 10 days before court date unless otherwise ordered. Requiring attendance – at least 7 days before the day the person is required to appear.** **Note – return date –** to be determined by the court for production of documents, to be on the date of hearing for attendance at court. *** note limit of 5 unless the court directs otherwise. Rule 15A.05 FMC Rules** **Format –** a. identify documents or thing by using an adequate description of it. b. specify name or designation of office or position of person subpoenaed. c. use the prescribed FMC form.	**Note –** Conduct money must be provided at the time of service. **Cheque –** min $25 but must be enough to meet reasonable expense to comply. For costs, refer to Rules 15A.07, 15A.10 & 15A.11 Dept of Children's Services NSW $55 + $$ if a lot of material Dept of Communities (Child Safety Services) Qld $65 Qld Police Service $67 Commissioner of Police NSW $67 if served with 14 days notice and $82 if less than 14 days. Dept of Education $63 Standard Fees – $55 **For witness to attend court – $85** **Brochure – note should be taken of the FMC Brochure** "Information for a person requesting the issue of a subpoena"	See Part 6 Division 6.1 re service. Rule 16.11 service by post for subpoena to produce Rule 6.06 personal service is required if the subpoena is for giving evidence. **Rule 15A.13 regarding the right to inspect – must serve a copy of the subpoena on all parties 10 days before the day stated in the subpoena for production and must file a Notice of Request to Inspect.** **See Rule 15A.14 regarding objection to inspecting or copying.**	

Best practice guidelines for lawyers providing legal 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 that 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.

4. Recognise that 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.

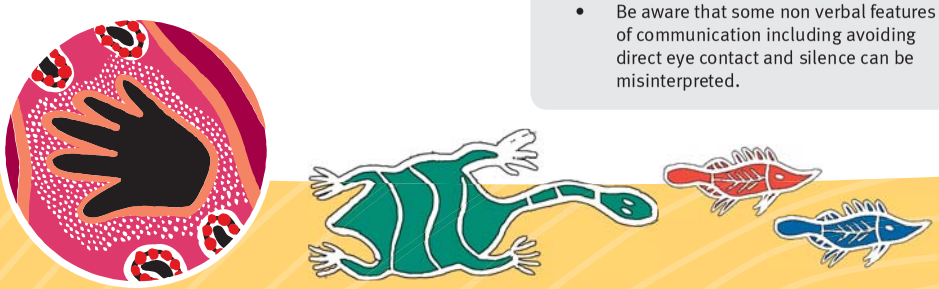
Practice points:

- 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 that 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.



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6. Understand that 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 that 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 these adoptions through Kupai Omasker.

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.

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Annexure Q
Suggested trial directions – Children's Court

Pursuant to Section 66(4) of the *Child Protection Act 1999*, the Children's Court make the following directions:

1. I set the matter down for hearing for the first day of trial on
   ……..

2. I direct that any subpoenas to produce documents be filed and served by
   ……..

3. I direct that the Department of Communities (Child Safety Services) file and serve all Affidavits intended to be relied upon at the hearing six (6) weeks prior to the first day of the hearing, namely by ……..
   As required by Section 59 of the *Child Protection Act 1999* this material will include an updated Case Plan and a copy of the report about the latest revision as required by Section 51X of the *Child Protection Act 1999*.

4. I direct that the Department of Communities (Child Safety Services) file and serve all parties with a list of witnesses it intends to call at hearing and a list of documents intended to be relied upon at hearing eight (8) weeks prior to the first day of hearing, namely by
   ……..

5. I direct that the Separate Representative file and serve all Affidavits intended to be relied upon at hearing, a list of witnesses intended to be called and a list of documents intended to be relied upon at hearing six (6) weeks prior to the first day of hearing, namely by
   ……..

6. I direct the Respondent parents file and serve all Affidavits intended to be relied upon at hearing, a list of witnesses intended to be called and a list of documents intended to be relied upon at hearing four (4) weeks prior to the first day of hearing, namely by
   ……

7. I direct that this matter shall be listed for a review mention four (4) weeks prior to the first day of hearing, namely on …… to ensure that these directions have been followed and that the matter is ready to proceed to trial.
   Any applications for witnesses to give evidence by telephone and any further directions that are required to progress the matter to hearing will be made on this date.

Annexure R
Family Dispute Resolution Conference – Preparation Form (Property)

To assist negotiations at a family dispute resolution conference, each party must:

- *complete* (to the best of their knowledge) this form; and
- *provide a copy* to Legal Aid Queensland.

Legal Aid Queensland will exchange these forms between the parties' solicitors before the conference. Once completed please email the form to your conference organiser. Preparation time is accounted for in the F1A and F1B grants of aid.

A conference date will not be set until this form is returned to our office together with the solicitor assessment sheet.

If this form is not returned together with the Solicitor Assessment Sheet then a family dispute resolution conference will not be arranged. The matter will be referred back to the grants officer for further assessment.

The information in this form is provided on a *"without prejudice"* basis, confidential within the terms of *Legal Aid Queensland Act 1997* and excluded from evidence under *section 131.(1)* of the *Evidence Act 1995*.

Office Use Only:

Conference Number: ..... Payment of Costs letter returned? .....

Name of Solicitor: ..... Phone Number: .....

Name of Party: .....

Date of Marriage: ..... Date of Separation: .....

Summary of assets & liabilities of both parties

Please ensure all relevant documents are brought to the conference

Assets	Valuation, Appraisal and/or Relevant documentation Available/ Attached?	Gross Value of Assets NK = Not Known NIL = Nil	Secured & Unsecured Debts NK = Not Known NIL = Nil	In current possession of W = Wife H = Husband
Real Estate – Indicate address	Yes/No			
Real Estate – indicate address	Yes/No			
Cash	Yes/No			
Bank etc Accounts – details credit & debit	Yes/No			
Bank etc Accounts – details credit & debit	Yes/No			
Bank etc Accounts – details credit & debit	Yes/No			
Subtotal	Not Relevant	**$**	**$**	Not Relevant

Assets	Valuation, Appraisal and/or Relevant documentation Available/ Attached?	Gross Value of Assets NK = Not Known NIL = Nil	Secured & Unsecured Debts NK = Not Known NIL = Nil	In current possession of W = Wife H = Husband
Subtotal *carried over*	Not Relevant	**$**	**$**	Not Relevant
Motor Vehicle – details	Yes/No			
Motor Vehicle – details	Yes/No			
Shares & Debentures in public companies	Yes/No			
Shares in private companies	Yes/No			
Tools & machinery	Yes/No			
Furniture & Effects	Yes/No			
Jewellery	Yes/No			
Life Insurance Policies	Current Surrender Values to be attached			
Superannuation Confirming letter with full details including contributions made (prior, during & after the marriage), membership period, benefit payable on immediate voluntary retirement, minimum permitted retirement age etc to be attached	Confirming letter required			
Superannuation Details as above	Confirming letter required			
Interest in business, partnership, joint venture etc.	Yes/No			
Loan Accounts (company, partnership)	Yes/No			
Long Service Leave entitlement (accumulated)	Yes/No			
Interest in a deceased estate	Yes/No			
Other Assets or Debts? *please specify*	Yes/No			
Other Assets or Debts? *please specify*	Yes/No			
Other Assets or Debts? *please specify*	Yes/No			
Total	Not Relevant	**$**	**$**	Not Relevant

Additional information to be detailed at the end of this form.

Your current average weekly income & benefits and expenses

Source of income or benefit	Weekly income
Personal Exertion Earnings	
Interest & Dividends	
Rent & Board	
Pension, benefits & social welfare payments	
Maintenance & child support	
Drawings from business, partnership, company, trust or other	
Retirement Payments	
Benefits from work eg car, phone, insurance etc	
Other *please specify*	
Total weekly income	**$ 00**

Types of expenses	Weekly expenses	Type of expenses	Weekly expenses
Expenses paid by others		House property insurance	
Income tax		Life insurance premiums	
Provisional tax		School fees	
Superannuation contributions		Child/ren's Books & stationery	
Food		Pocket Money	
Household Supplies		Children's Clothing	
Cleaning		Your clothing	
Repairs/Replacements		Entertaining	
Health Insurance		Maintenance/Child Support	
Chemist/Pharmaceutical		Motor Vehicle expenses	
Medical/Optical		Fares	
Board/Rent		Petrol	
Mortgage		Gifts/Hobbies	
Rates		Other *please specify*	
Unit Levies		Other *please specify*	
Gas/Electricity		Other *please specify*	
Telephone		Other *please specify*	
Subtotal A	**$**	**Subtotal B**	**$**
Total weekly expenses (Subtotals A + B)		**$**	**00**

Additional information

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