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# Legal Aid ACT

## GENERAL PANEL SERVICES AGREEMENT

**Dated** \_\_\_\_\_ 2012

**Parties** **Legal Aid Commission (A.C.T.)**

[Insert practitioner's full name]

Legal Aid Commission (A.C.T.)

2 Allsop Street

Canberra ACT 2601

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person in that matter.

**Compliance Audit Requirements**

means compliance audit requirements as determined by Legal Aid ACT from time to time after consultation with the Law Society of the Australian Capital Territory and the ACT Bar Association.

**Client Contribution**

means the amount required to be paid by the legally assisted person in relation to a grant of legal assistance under section 31 of the Act.

**Contract Material**

means all material created, written or otherwise brought into existence by the Practitioner as part of, or for the purpose of performing the Services including the legally assisted person's file, all reports or opinions (whether in draft or final form), documents, equipment, information and data stored by any means.

**Contract Price**

means the amount payable for the Services as specified in the assignment as extended from time to time.

**Grant of Legal Assistance**

means a grant of legal assistance to a person under section 26 of the Act, and includes a further grant of legal assistance under section 27 of the Act.

**GST**

has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Invoice**

means an invoice that:

- (i) is a valid tax invoice (if GST is payable in respect of the provision of the Services);
- (ii) clearly sets out the amount that is due for payment under the Assignment, is correctly calculated and is in respect of Services that have been performed in accordance with this Agreement;
- (iii) sets out the Services provided in the manner required by the Assignment and the practice standards;
- (iv) is rendered within the time specified in the Assignment

- (if any) and addressed to Legal Aid ACT; and
- (v) is otherwise rendered in accordance with any Guidelines or Practice Standards approved by Legal Aid ACT.

<b>Legal Aid Material</b>	means any material provided by Legal Aid ACT to the Practitioner for the purposes of this Agreement or the Services including documents, equipment, information and data stored by any means.
<b>Legal Aid ACT</b>	means the body corporate established by section 6 of the <i>Legal Aid Act 1977</i> .
<b>Legal Aid Information</b>	<p>means information that:</p> <ul style="list-style-type: none"><li>(i) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of Legal Aid ACT which are by their nature confidential;</li><li>(ii) is notified (whether in writing or not) by Legal Aid ACT to the Practitioner as being confidential; or</li><li>(iii) is Personal Information,</li></ul> <p>but does not include information that:</p> <ul style="list-style-type: none"><li>(iv) is or becomes public knowledge other than by breach of this Agreement;</li><li>(v) has been independently developed or acquired by the Practitioner; or</li><li>(vi) has been notified by Legal Aid ACT to the Practitioner as not being confidential.</li></ul>
<b>Legal Services</b>	means services provided in the capacity of a legal practitioner.
<b>Matter</b>	means a matter in which Legal Aid ACT has made a Grant of Legal Assistance.
<b>Personal Information</b>	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

<b>Practitioner</b>	has the same meaning as private legal practitioner in the <i>Legal Aid Act 1977</i> .
<b>Practice Standards</b>	means the practice standards applicable to the Services as determined by Legal Aid ACT after consultation with the Law Society of the Australian Capital Territory and the ACT Bar Association.
<b>Services</b>	means legal services in an assigned Matter, and does not include legal services provided prior to the commencement date specified in the Assignment or administration, preparation of invoices or correspondence with Legal Aid ACT in relation to the Assignment.
<b>Term</b>	means the term specified in <b>Clause 2.1</b> , or if extended under <b>clause 2.2</b> , the initial term and the extended term.
<b>Territory</b>	means: <ul style="list-style-type: none"> <li>(i) when used in a geographical sense, the Australian Capital Territory; and</li> <li>(ii) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).</li> </ul>

## 1.2 General

In this Agreement, unless a contrary intention is expressed:

- (a) references to “Practitioner” include any employees, agents or subcontractors of the Practitioner;
- (b) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (c) words importing a gender include the others; words in the singular number include the plural and vice versa; and where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) “include” is not to be construed as a word of limitation;
- (e) headings have no effect on the interpretation of the provisions; and

- (f) an obligation imposed by this Agreement on more than one person binds them jointly and severally.

## **2. Term**

### **2.1 Term**

This Agreement operates from the date of this Agreement to 30 June 2016 (**initial term**) unless terminated under the provisions of this Agreement or the Act.

### **2.2 Extension**

This Agreement may be extended by written agreement of the parties prior to 30 June 2016 (extended term).

## **3. Appointment to the General Panel**

### **3.1 Appointment**

Upon execution of this Agreement Legal Aid ACT will appoint the Practitioner to the General Panel and will, subject to this Agreement and the Act, retain the Practitioner on the General Panel for the duration of the term.

### **3.2 Publication of name**

Legal Aid ACT may with the Practitioner's approval publish the Practitioner's name in a list of members of the General Panel.

### **3.3 Promotion of membership**

The Practitioner may promote themselves as a member of the General Panel.

## **4. Performance of services**

### **4.1 Performance of Services**

Legal Aid ACT engages the Practitioner to perform the Services in accordance with the provisions of this Agreement.

### **4.2 Assignment and subcontracting**

The Practitioner must not subcontract the performance of the Services or assign the whole or part of this Agreement without the prior written consent of Legal Aid ACT. If Legal Aid ACT gives its consent, Legal Aid ACT may impose any conditions.

### **4.3 Practitioner's employees**

- (i) Where the Services are to be provided by employees of the Practitioner, the Practitioner must:
  - a. ensure that the employees are appropriately qualified and experienced to perform the Services;

- b. notify Legal Aid ACT of those employees ordinarily providing the Services;
  - c. have in place an adequate supervisory system for employees providing the Services on behalf of the Practitioner.
- (ii) A certification of a matter for the purpose of this Agreement by an employee of the Practitioner is deemed to be a certification by the Practitioner.

#### **4.4 Specified employees**

The Practitioner must:

- (i) upon receiving written direction by Legal Aid ACT, ensure that the Services are performed personally by the Practitioner or by a specified employee; and
- (ii) if the Practitioner or the specified employee is unable to perform the Services, advise Legal Aid ACT at the earliest opportunity.

#### **5. Assignment of matters**

- (i) Legal Aid ACT will assign Matters in accordance with the Act.
- (ii) This Agreement does not bind Legal Aid ACT to assign any Matter or any particular volume or types of Matters to the Practitioner.
- (iii) Legal Aid ACT may assign a Matter to any member of the General Panel or to a legal practitioner employed by Legal Aid ACT.
- (iv) Where Legal Aid ACT has assigned a Matter to the Practitioner, it may re-assign the Matter to a subsequent legal practitioner where it is of the opinion that it is reasonable to do so.
- (v) Where Legal Aid ACT re-assigns a Matter to a subsequent legal practitioner, Legal Aid ACT will advise the Practitioner of the reasons why the Matter was re-assigned, and the Practitioner will, on request of Legal Aid ACT, transfer all the relevant files to the subsequent legal practitioner.
- (vi) Where Legal Aid ACT assigns a Matter arising from an Application lodged by the Practitioner to another legal practitioner, Legal Aid ACT will advise the Practitioner of the reasons why the Matter was assigned to another legal practitioner.
- (vii) The Practitioner will accept an Assignment from Legal Aid ACT unless the Practitioner has a conflict of interest or other reasonable grounds to decline the Assignment.
- (viii) The Practitioner will notify Legal Aid ACT within 72 hours of the Assignment if the Assignment cannot be accepted and is otherwise deemed to have accepted the Assignment on the date of the Assignment.

## **6. Contract price and payment**

### **6.1 Invoice**

- (i) Legal Aid ACT must pay the Practitioner the Contract Price less any Client Contribution following its receipt of an Invoice.
- (ii) Unless otherwise stated in this Agreement or the Assignment, the Contract Price is:
  - a. payable within 30 days of receipt by Legal Aid ACT of an Invoice;
  - b. inclusive of GST and all other taxes, duties and charges; and
  - c. inclusive of all disbursements, including out-of-pocket expenses, incurred by the Practitioner.
- (iii) Legal Aid ACT is not liable for any disbursement, including counsel's fees, incurred by a practitioner without prior approval.

### **6.2 Contribution by legally assisted person**

Where the Grant of Legal Assistance is subject to a condition that the legally assisted person will pay a Client Contribution, the Practitioner is authorised to collect the Client Contribution and retain it on account of the Contract Price.

### **6.3 Incorrect payments**

If, after payment, an Invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Practitioner, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by Legal Aid ACT to the Practitioner.

### **6.4 Re-assigned matters**

Where a matter is re-assigned, Legal Aid ACT must pay to the Practitioner upon receipt of an Invoice a proportion of the Contract Price that fairly reflects the work done by the Practitioner prior to notice of the re-assignment.

### **6.5 Deferral of payment**

Legal Aid ACT may, without limiting any other right it may have, defer payment of the Contract Price payable to the Practitioner until the Practitioner has completed the Services to the satisfaction of Legal Aid ACT.

### **6.6 Mode of Payment**

- (i) All payments will be by electronic funds transfer to the bank account nominated in writing by the Practitioner.
- (ii) The Practitioner must provide Legal Aid ACT with the necessary details of the Practitioner's account with a financial institution.

## **6.7 Direct payment of disbursements**

The Practitioner may request Legal Aid ACT to pay any disbursement component of the Contract Price directly to the third party to whom that disbursement component is payable.

## **7. Equipment and materials**

### **7.1 Equipment**

If requested by Legal Aid ACT the Practitioner will:

- (i) use the internet to electronically lodge applications for legal assistance, invoices, and for specified communication;
- (ii) establish at the Practitioner's expense such facilities and equipment as are necessary to enable the Practitioner to do so;
- (iii) ensure staff in its employ are adequately trained in the use of such facilities and equipment;

### **7.2 Ownership of Contract Material**

Ownership of all Contract Material, including any intellectual property rights, vests on its creation in the Practitioner.

### **7.3 Use of Contract Material**

The Practitioner:

- (i) must ensure that the use of any Contract Material will not infringe the intellectual property rights of any third party;
- (ii) grants to Legal Aid ACT a perpetual, royalty-free licence to view, copy and use the Contract Material for the purpose of administering its functions under Part 5 of the Act to the extent necessary for Legal Aid ACT to exercise its rights under this Agreement;
- (iii) will not assert against Legal Aid ACT any lien or charge over any Contract Material;
- (iv) must ensure that no fees, royalties or other payments are payable in respect of any third party rights as a result of Legal Aid ACT's (or its agents) or a subsequent legal practitioner's use of any Contract Material.

### **7.4 Legal Aid Material**

Legal Aid Material will remain the property of Legal Aid ACT and the Practitioner must only use that material for the purpose of providing the Services or otherwise in accordance with any conditions notified to it by Legal Aid ACT.

### **7.5 Practitioner's material**

Material owned by the Practitioner and used for the purpose of providing the Services remains the property of the Practitioner and the Practitioner grants to

Legal Aid ACT a perpetual, royalty-free licence to use the Practitioner’s material to the extent necessary for Legal Aid ACT to administer its functions under Part 5 of the Act to the extent necessary to exercise its rights under this Agreement.

#### **7.6 Meaning of “use”**

For the purpose of clause 7, “use” includes supply, reproduce, publish, perform, communicate, broadcast, adapt and copy.

### **8. Management of information**

#### **8.1 Storage and safekeeping**

The Practitioner must ensure the safe keeping and proper preservation of Contract Material, Legal Aid Material and Legal Aid Information in its possession or control as required under the *Legal Profession Act 2006*.

#### **8.2 Use and disclosure**

In relation to Legal Aid Information, the Practitioner will also have regard to the Information Privacy Principles set out in the *Privacy Act 1988* and take all reasonable measures to ensure that Legal Aid Information accessed or held by it in connection with the Services is protected against loss, unauthorised access, use, modification, disclosure or other misuse.

### **9. Insurance and indemnity**

#### **9.1 Practitioner’s insurance**

The Practitioner must effect and maintain for the Term all insurance coverage required to be effected by it by law and must produce evidence of that insurance as required by Legal Aid ACT.

#### **9.2 Indemnity**

The Practitioner indemnifies Legal Aid ACT, its employees and agents against liability in respect of all claims, costs and expenses and for all loss, damage, injury or death to persons or property caused by the Practitioner, in connection with the provision of the Services, except to the extent that Legal Aid ACT contributed to the relevant loss, damage or injury.

#### **9.3 Claims to be made good**

The Practitioner must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in clause 9.2 and Legal Aid ACT may deduct the amount, or any part of it, from any moneys due or becoming due to the Practitioner.

## **10. Other obligations of the parties**

### **10.1 Conflict of Interest**

The Practitioner must notify Legal Aid ACT as soon as practicable after the Practitioner becomes aware that the Practitioner has an actual or potential conflict of interest in any matter assigned to the Practitioner.

If Legal Aid ACT becomes aware the Practitioner has an actual or potential conflict of interest in an assigned matter, Legal Aid ACT may take action in accordance with this Agreement to eliminate or minimise the conflict, including re-assigning the matter.

### **10.2 Right to Practice**

In this Clause 10.2, Practitioner means the Practitioner personally and does not include employees, agents or subcontractors of the Practitioner.

The Practitioner will:

- (i) maintain a current unrestricted practising certificate in accordance with the *Legal Profession Act 2006*, without any condition, restriction or qualification that would limit or restrict the Practitioner's capacity to provide the Services;
- (ii) cease to provide the Services immediately upon becoming aware that they no longer comply with clause 10.2(i); and
- (iii) notify Legal Aid ACT immediately upon becoming aware that they no longer comply with clause 10.2(i).

### **10.3 Maintaining eligibility for membership of the General Panel**

In this Clause 10.3, Practitioner means the Practitioner personally and does not include employees, agents or subcontractors of the Practitioner.

The Practitioner will:

- (i) meet the criteria for appointment to the General Panel at all times during the Term; and
- (ii) notify Legal Aid ACT immediately upon becoming aware of facts by reason of which they may no longer meet the criteria for appointment to the General Panel.

### **10.4 Standard of Practice**

In providing the Services the Practitioner will:

- (i) comply with the *Legal Profession Act 2006* and Professional Conduct Rules published by the Law Society of the Australian Capital Territory;
- (ii) comply with the Practice Standards;
- (iii) perform the Services to the standard of care and skill expected of a person who regularly acts in the capacity in which the Practitioner is engaged and who possesses the knowledge, skill and experience of a person qualified to

act in that capacity; and

- (iv) notify Legal Aid ACT in writing immediately upon becoming aware of bankruptcy, disciplinary proceedings or criminal proceedings (excluding minor traffic offences) being commenced or foreshadowed against the Practitioner.

#### **10.5 Good faith**

Each party will at all times act honestly and in good faith in their dealings with the other party.

#### **10.6 Compliance Audit Requirements**

The Practitioner will comply with the Compliance Audit Requirements.

Upon request by Legal Aid ACT the Practitioner will produce the instruction file to Legal Aid ACT for inspection and copying.

#### **10.7 Communication**

- (i) Each party will promptly respond to requests by the other party for relevant information in relation to the Services.
- (ii) Legal Aid ACT will notify the practitioner in a timely manner of changes to the Act, processes, procedures or policies relevant to the Services.
- (iii) Subject to clause 7.1 each party will so far as practicable and appropriate utilise E-mail for the purposes of communication, and will upon execution of this Agreement notify the other party of an E-mail address for this purpose.
- (iv) Each party will advise the other within 14 days of any change in their E-mail, business address or contact details.
- (v) A notice or other communication required or permitted under this Agreement to be served on or given to a party must be in writing. A notice will be deemed to have been given:
  - a. if delivered by hand, on delivery;
  - b. if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
  - c. if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
  - d. if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

#### **11. Breach of Agreement**

- (i) Either party to this Agreement may give the other party written notice of an apparent breach of this Agreement by the other party and require the

other party to provide a written response by way of explanation.

- (ii) A written response to such a notice must be provided within 28 days after receipt of the notice.

## **12. Termination of agreement**

- (i) If Legal Aid ACT removes the Practitioner from the General Panel under section 31E (4) of the Act or at the Practitioner's request under this Agreement, Legal Aid ACT will terminate this Agreement by notice in writing to the Practitioner.
- (ii) The Practitioner may at any time request Legal Aid ACT in writing to remove the Practitioner from the General Panel.
- (iii) Termination of this Agreement takes effect immediately upon service of the notice referred to this clause unless the notice specifies a different date from which the termination is to take effect.
- (iv) Where a Practitioner is removed from the General Panel at the Practitioner's request under this clause, the notice will specify, as the date from which termination of this Agreement is to take effect, a date three months after the date of the Practitioner's request for removal, unless the parties agree on another date.

## **13. Procedure on termination**

- (i) In the event this Agreement is terminated, Legal Aid ACT will be liable only for:
  - a. payments under this Agreement for Services rendered before the date of termination, and
  - b. any reasonable costs incurred by the Practitioner and directly attributable to the termination or reduction of Services, but not in respect of loss of prospective profits (subject to the provisions in this clause).
- (ii) On receipt of a notice of termination under clause 12 the Practitioner must:
  - a. cease the provision of Services;
  - b. comply with any instructions given by Legal Aid ACT in relation to matters currently assigned to the Practitioner; and
  - c. take all available steps to minimise loss to Legal Aid ACT and inconvenience or disruption to the legally assisted person resulting from the termination or cessation of Services.
- (iii) Nothing in clause 13 prejudices any other rights or remedies of Legal Aid ACT in respect of any breach of this Agreement.

## **14. General**

### **14.1 No employment, partnership or agency relationship**

Nothing in this Agreement constitutes the Practitioner, or their employees, agents or subcontractors as employees, partners or agents of Legal Aid ACT or creates any employment, partnership or agency for any purpose.

The Practitioner must not represent themselves, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of Legal Aid ACT.

### **14.2 Entire agreement**

This Agreement comprises the entire agreement between the parties in relation to the Services and supersedes any prior representations, negotiations, writings, memoranda and agreements.

### **14.3 Severability**

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

### **14.4 Variation**

This Agreement may be varied only by the written agreement of the parties prior to the expiration of this Agreement.

### **14.5 No waiver**

Failure or omission by Legal Aid ACT at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies that Legal Aid ACT may have in respect of that provision.

### **14.6 Governing law**

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

### **14.7 Compliance with laws**

The Practitioner must comply with the laws from time to time in force in the Territory in performing the Services.

### **14.8 Survival of clauses**

Clauses 8.1, 8.2, 9.2 and 9.3 will survive the expiration or earlier termination of this Agreement.

**Date of Agreement**

2012

**Signed** for and on behalf of  
Legal Aid Commission (A.C.T.)

In the presence of:

.....

[Signature of delegate]

.....

Signature of witness

.....

[Name of witness]

**Signed** by [name of Practitioner]

In the presence of:

.....

[Signature of Practitioner]

.....

Signature of witness

.....

[Name of witness]