

Measures for VLA Practice Standards

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1. Principle

Victoria Legal Aid's (VLA's) practice standards apply to practitioners when they are performing any legal aid service. The standards inform how VLA monitors the effective, economic and efficient delivery of high-quality legal aid services.

The practice standards apply to **any** practitioner providing legal aid services. However, it is the Panel Certifier who is accountable for ensuring that the practice standards are met on a matter that they have certified.

The measures aim to improve transparency about how we assess quality of work as part of our quality audit function and educate practitioners about VLA's expectations.

Practitioners with doubts about how the standards apply, or what these measures mean, should contact VLA to discuss them.

2. Purpose and scope

These measures support the practice standards by expanding on how we assess adherence to the standards and providing examples of the types of evidence we expect to see on file. This is intended to provide clarity for practitioners on how they can demonstrate that they meet the standards.

The practice standards form part of the firm or practitioner's obligations, along with the Panel Deed/Panel Certifier Acknowledgement, relevant panel entry requirements (firm or individual), panel inclusion notice and any other conditions provided on the [Practitioner panels](#) page of VLA's website.

2.1 Definitions

In this document:

Client has the same meaning as 'Assisted Person' where that term appears in the Panel Deed

Firm has the meaning of Provider as contained in the Panel Deed

Practitioner has the meaning of Provider, Provider Personnel and/or Panel Certifier as contained in the Panel Deed.

3. Measures for VLA's Practice Standards

The following measures apply to VLA's practice standards. Each standard is repeated here in italics, followed by the measure/s.

Where VLA receives information, which indicates that a practitioner or firm may not be meeting a practice standard, this information may be used in addition to, or in lieu of, the measures listed in this document.

Failure to comply with the practice standards may impact on the practitioner's or firm's eligibility to undertake legally aided matters.

3.1 Measures for standards relating to knowledge of and compliance with law

Practitioners must know and comply with their obligations as set out in current legislation, regulations and rules governing the legal profession nationally and in Victoria, including:

- [Legal Profession Uniform Law Application Act 2014 \(Vic\)](#)
- [Legal Profession Uniform General Rules 2015](#)

- [Legal Profession Uniform Admission Rules 2015](#)
- [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](#)
- [Legal Profession Uniform Legal Practice \(Solicitors\) Rules 2015](#)
- [Legal Profession Uniform Law Continuing Professional Development \(Solicitors\) Rules 2015](#)
- [LIV Accredited Specialisation Scheme Rules 2015](#) (for accredited specialists)
- Subject matter-specific legislation and rules
- The general legislation and rules applicable to the relevant court
- Relevant practice directions and practice notes.

Practitioners providing legal aid services are expected to act and conduct cases in accordance with the above, as well as the [Legal Aid Act 1978](#) and any applicable additional standards relevant to the area of law and specific client characteristic.

To meet this standard, practitioners must be able to demonstrate that they:

- have a current practising certificate
- are not subject to any findings of professional misconduct or unsatisfactory professional conduct
- have notified VLA of any criminal charges laid against them, or of a current investigation by the Legal Services Board or other regulatory body.
- have maintained LIV accreditation status (if applicable)
- have not committed any breaches of the [Legal Aid Act 1978](#) (eg breaches, in the auditor's view, of sections 26 (1), 32 or 44, that are supported by documentary evidence that have not been remedied by the practitioner)
- have participated in relevant training on legal aid obligations and processes as reasonably required by VLA.

3.2 Measures for practice standards relating to responsibilities as a legal aid practitioner

A practitioner providing legal aid services must:

- a. have up-to-date knowledge and understanding of legal aid obligations and processes*

The practitioner must abide by the terms and conditions of their Certifier Status.

The practitioner must subscribe to Legal Aid Brief to keep abreast of any changes impacting their obligations and processes.

The file contains records of:

- documentary proof of matter
- evidence that allocation guideline/s met. This should include:
 - proof of means
 - all documentation necessary for forming an opinion as to merit.
- records which are consistent with information supplied to Grants and Quality Assurance (GQA) in support of the application for the grant of assistance, or which explain any inconsistencies or anomalies.

- the use of VLA guideline worksheets to record reasons for certifying that matters meet guidelines is highly recommended.

b. have up-to-date knowledge and understanding of the guidelines for legal assistance and the notes on the guidelines

The file contains records of:

- documentary proof of matter
- evidence that allocation guideline/s met. This should include:
 - proof of means
 - all documentation necessary for forming an opinion as to merit
- records which are consistent with information supplied to GQA in support of the application for the grant of assistance, or which explain any inconsistencies or anomalies.

c. participate in training as reasonably required by VLA

The practitioner has made themselves available to attend training sessions where there has been advance warning. If the practitioner is unable to attend due to unforeseeable and/or unavoidable circumstances, the practitioner has provided reasons to VLA.

d. when taking instructions from a client, or as soon as possible thereafter, inform the client of any rights the client may have to apply for legal assistance unless there is no real possibility that the client is eligible to receive legal assistance

The practitioner can demonstrate that any claim or accusation that the practitioner has failed to inform a client of any right to apply for legal assistance is false, or otherwise reasonable having regard to VLA's means test, and any relevant guidelines and/or merits test.

e. proactively assist and support an applicant to apply for legal assistance

The file contains records:

- that the application lodged within one week of initial instructions, unless file records clearly show that the delay has been caused by information not being supplied by the applicant within the time frame sought by the practitioner.
- that demonstrate that the practitioner has explained and assisted the client in exercising their reconsideration and review rights as appropriate
- all practitioners in the firm understand their obligations under the Legal Aid Act, and that any private bills legitimately issued to the client have been reviewed by the firm to ensure that there have been no charges included for liaising with VLA or preparing an application for legal assistance.

f. submit all documents required by VLA in support of applications for legal assistance, reconsideration and independent review within a reasonable time

The file contains records that demonstrate:

- all documents were submitted to VLA at least 14 days before the next significant event or, where the next significant date is less than 14 days away, within one day of receipt of all relevant documents and/or client's instructions
- requests for reconsideration were submitted within 14 days of the initial decision

- requests for independent review were submitted within 21 days of the date of the reconsideration decision.

g. inform VLA of any private funding arrangements the practitioner has or has had with the applicant

The file contains records of:

- any private funding arrangements, which clearly explain the purpose, nature, extent and quantum of the private arrangements and why they are not inconsistent with a current grant of legal assistance
- when the private funding arrangement was exhausted (stage of matter and date)
- when and how these arrangements were communicated to GQA.
- advice to the client that arrangements with service providers (barristers, experts etc.) may not continue once private funds are expended, as services provided under a grant of legal assistance will be capped according to the fees approved by VLA.

h. inform VLA of any private funding capacity the applicant may have, that the practitioner knows about

The file contains records of:

- any private funding capacity the client has
- advice given to the client about their private funding capacity and their eligibility for legal assistance
- when and how the client's private funding capacity was communicated to GQA.

i. explain to the applicant what services will be provided or arranged for under the grant of legal assistance

The file contains records that the practitioner communicated the nature of the grant of assistance to the client. The explanation should include what work is funded and what, if any, issues relating to the legal matter will not be funded.

j. apply for a grant of legal assistance or an extension of assistance before undertaking any work or engaging third party providers (eg experts, barristers)

The file contains records that an extension for each piece of work that requires one was sought and granted by VLA before the work is undertaken (including engaging third parties such as barristers, experts and interpreters).

k. (for child protection matters) only apply for a grant of assistance where VLA has made the initial referral of the applicant and provided a reference number, unless there is a pre-existing relationship between the application and the practitioner, or the applicant was referred to the practitioner by a party other than VLA or DHHS, or the applicant selected the practitioner of their own accord

The file contains the reference number confirming that the applicant was referred to the practitioner by VLA, or a clear record of how the applicant otherwise selected or was referred to the practitioner.

l. not demand, take or accept payment or enter into a private costs agreement with a client for the matter in which legal assistance has been granted. This relates to professional costs and third-party costs and disbursements

The file contains records of:

- any private funding arrangements, which clearly explain the purpose, nature, extent and quantum of the private arrangements and why they are not inconsistent with a current grant of legal assistance.

m. keep the client informed of their entitlements, rights and obligations in relation to a grant of legal assistance

The file contains records that the practitioner has:

- kept the client informed of their rights and obligations
- advised the client about any contribution which may be sought by VLA
- where VLA is seeking an Equitable Charge as a condition of assistance, advice to the client about the Equitable Charge and the client's instructions to proceed in those circumstances.

n. notify VLA immediately of anything that may affect the client's entitlement to legal assistance or obligation to pay a contribution to VLA

The file contains records:

- of anything that may affect the client's entitlement to legal assistance or obligation to pay a contribution, and that same has been communicated to GQA.
- which are consistent with information supplied to GQA or which explain any inconsistencies or anomalies

o. advise third party providers of the relevant fees fixed by VLA before engaging their services

The file contains records that the practitioner has advised any third-party service providers of VLA's relevant fixed fees before engaging their services.

p. where an interpreter or translator is required, only use those accredited and obtain legal aid funding for this in a timely manner

The file contains records that:

- where applicable, an extension was sought and granted by VLA before engaging the interpreter or translator
- any interpreter or translator used is accredited by National Accreditation Authority for Translators and Interpreters Ltd (NAATI) at professional level

or

- an interpreter or translator accredited by NAATI at a lower level (ie para-professional, language aide, recognised practitioner) is only used if:
 - no interpreters or translators have been accredited at a professional level by NAATI in the required language

or

- the practitioner is unable to secure a professionally accredited interpreter or translator and is unlikely to be able to secure one in the future, and the use of a lower level interpreter or translator is approved by the Panel Certifier with responsibility for the file.

Family members or friends of the practitioner or the client are used only in limited circumstances such as confirming the time of an appointment, and only where express permission has been obtained from the client. The client's instructions to this effect should be recorded on file.

q. accept all VLA referrals unless prevented by a conflict of interest or other reasonable cause

Where the practitioner finds that a conflict exists, they can demonstrate a full and detailed rationale for being unable to act including:

- the reasons for arriving at the view that a conflict or other reasonable cause exists to prevent them acting
- the nature of the conflict or other circumstances
- an assessment of if and how the conflict or other circumstances can be adequately managed.

r. promptly return to VLA for re-assignment any matter that the practitioner lacks the expertise or capacity to undertake (including any potential appeal)

The file contains records that:

- demonstrate that the practitioner, or someone under their supervision, has sufficient expertise and capacity to conclude a matter to the required standard
- where the practitioner is uncertain about their expertise and/or their capacity to conduct the matter, GQA was contacted promptly to discuss appropriate arrangements or to have the matter re-assigned
- where the practitioner has used an agent to deal with their lack of expertise and/or capacity, records on file should demonstrate that GQA was contacted promptly to discuss appropriate arrangements or to have the matter re-assigned to another practitioner.

The file does not contain any records that the practitioner should reasonably have determined that they lacked the expertise or capacity and failed to return the matter promptly to GQA to have matter re-assigned to another practitioner.

For example, if the matter involves significantly more complex issues than the practitioner's previous experience, expertise or education (CPD) has equipped them for and they are unable to obtain appropriate supervision and/or assistance from another suitably experienced practitioner, VLA would expect that the practitioner contact GQA immediately to arrange to have the matter re-assigned as they lack the expertise to undertake it.

Or, for example, if a practitioner with a heavy caseload is unable to devote sufficient time to have carriage of, or supervise another practitioner to undertake a matter in a way that ensures sufficient quality of work, it is expected that the practitioner contact GQA immediately to arrange to have the matter re-assigned to another practitioner.

s. be mindful of any actual or potential conflict that may arise during the course of a matter, and inform VLA of the details of any conflict as soon as the conflict arises so that the matter can be re-assigned

The file contains records:

- that conflict checks were undertaken at relevant times throughout the course of the matter (eg when the witness list was provided and when new witnesses were added to the list). The practitioner must retain the documented results of the conflict check on file.
- detailing any conflicts or potential conflicts arising during the course of the matter

- that the practitioner did identify and resolve all conflicts that they reasonably should have identified
 - that if the practitioner has found a conflict exists:
 - the reasons for arriving at the view that a conflict exists, the nature of the conflict, and assessment of if and how the conflict can be adequately managed
 - the practitioner contacted GQA within two business days to explain the nature of the conflict
 - if GQA agree that it is appropriate to re-assign the matter due to conflict, the practitioner has facilitated the re-assignment of the matter in accordance with instructions from GQA
 - the client was informed of the conflict immediately following confirmation from GQA that the matter will be re-assigned due to conflict.
- t. (for individual Panel Certifiers) proactively and adequately supervise any work done by others on matters they have certified, ensuring they are aware of obligations and processes that apply to legally assisted clients, and these practice standards*

The file contains records that necessary supervision has been performed including:

- records of supervision arrangements, which demonstrate why the supervision arrangement was appropriate in this case
- regular file reviews of the progress of the matter were conducted
- actions arising and who was responsible for completing the actions
- clear accountabilities for delegated tasks.

***Measures d, e, f, g, h, k, m and n do not apply to independent children’s lawyers**

For indictable crime matters

Indictable Crime Panel Certifiers can demonstrate adequate supervision by signing off on fully completed copies of the [indictable crime quality tools](#) (Brief Analysis and Case Strategy template, Committal Report and Trial Preparation Plan template, applicable indictable crime checklists).

The use of these tools is **mandatory** for VLA staff lawyers and **highly recommended** to private practitioners.

- u. run the matter in the most effective, economic and efficient manner possible*

The file contains records that:

- account for delays or other matters preventing resolution of the matter.
- explain unusual or excessive invoicing.

- v. invoice for every billable event or work item at each stage of the matter*

The file contains records that the practitioner has invoiced VLA within 30 days of the finalisation of each stage of the matter.

- w. make legally aided files and/or other materials available to VLA upon request, in the timeframe requested*

The file contains records that that any request by VLA for files and/or other materials were made available within the timeframe requested or, if not, the practitioner has provided reasonable explanation for the delay.

- x. *seek costs certificates or costs orders where appropriate and, where applicable make any application to the Appeal Costs Board to recover costs*

The file contains records that the practitioner has applied for an Appeal Costs Fund certificate or cost order within seven days of the hearing and has made any application to the Appeal Costs Board to recover costs within 14 days of the Appeal Costs Fund Certificate being granted.

- y. *inform VLA of any opportunities to recover costs*

The file contains records that the practitioner has informed GQA of any opportunities to recover costs.

- z. *contact VLA before making any applications under:*

- *section 197 or 357 of the [Criminal Procedure Act 2009](#)*
- *any state or Commonwealth confiscation legislation where VLA would be an interested party to the proceedings or may be able to recover costs*

The file contains records that the practitioner contacted GQA by telephone or email before making any such applications.

- aa. *notify VLA immediately of any complaint made against them to the Legal Services Commissioner or the Law Institute of Victoria, or of any investigation commenced by the Legal Services Commissioner or other regulatory body*

Where a complaint has been made or investigation commenced, file records confirm that the practitioner has notified VLA about the issue and investigation within seven days, and has provided VLA with regular and timely updates about the progress of any investigation.

- bb. *notify VLA immediately of any claim made against them for professional negligence where the professional indemnity insurer has accepted liability*

Where VLA becomes aware of any claim, it is expected that the file contains records about the insurance issue and a timely and full disclosure to VLA about the issue.

- cc. *assist VLA to resolve any complaint by providing all relevant information to VLA within the given timeframe*

Records that the practitioner complied with VLA's request for information or action regarding any complaints within requested timeframe or, if not, the practitioner has provided reasonable explanation for the delay.

- dd. *not represent themselves as a VLA staff practitioner or other employee, unless they are one*

The non-VLA staff practitioner can demonstrate that any claim or accusation that they represented themselves as a VLA staff practitioner or employee is false or that a reasonable person is likely to interpret the claim or accusation as false.

- ee. *inform VLA of any concerns expressed by the court about the conduct of a legally aided matter*

Where VLA becomes aware of concerns expressed by the court about the conduct of a legally aided matter, it is expected that the file contains records about the issue and full disclosure to VLA about the issue within seven days of the issue being raised.

- ff. provide a final report and final account to VLA and close the file in ATLAS within 30 days of the matter being legally finalised or the grant of legal assistance being terminated*

The file contains records that the final report and account have been provided to VLA within 30 days of the matter being legally finalised or the grant of assistance being terminated.

- gg. treat VLA staff with respect and courtesy*

The file contains records that demonstrate that all communications with VLA staff, are respectful and courteous.

Any records held by VLA (eg file notes of conversations with VLA staff) demonstrate that all communications with VLA staff, are respectful and courteous.

VLA's intention is not to stifle genuine disagreement between parties, but expects that the demeanour, language and approach used to raise and resolve the disagreement is professional at all times

- hh. not denigrate or misrepresent VLA*

Practitioners must be able to substantiate (via verifiable records) any comments, claims or accusations that are attributable to them (whether on file, in court, in communication with clients or potential clients or in the public domain) that are critical of VLA, represent VLA in a negative manner or relate to perceived failures by VLA.

- ii. ensure that dealings with clients, other legal professionals, service providers, the judiciary and other relevant parties are professional and appropriate*

The file contains records that the practitioner has behaved in accordance with their professional obligations when interacting with these parties and that dealings with these parties is professional and appropriate

Any records held by VLA (eg file notes, complaints) demonstrate that all such dealings are respectful and courteous.

- jj. Use VLA's mandatory worksheet for requesting medical/expert reports into the mental functioning of an offender in indictable criminal matters.*

The file contains a record of a mandatory worksheet used by the practitioner to request a medical or expert report in indictable criminal matters.

- kk. ensure that all third party service providers (including but not confined to medical/other experts, barristers, interpreters) are to be paid in a timely manner.*

The file contains records confirming that invoices from third party providers are paid:

- within 30 days of the matter being legally finalised; and
- where possible, directly from VLA through the ATLAS system.

- ll. comply with and maintain an up-to-date knowledge of the relevant duty lawyer guidelines.*

The duty lawyer record contains:

- sufficient, legible information for another person to understand the facts related by the client and the advice given.
- where practical, copies of any letters or relevant documentation sighted.
- details of any referrals given.

* Responsibilities d, e, f, g, h, k, m, n and ll do not apply to independent children's lawyers.

3.3 Measures for standards relating to responsibilities to the client

A practitioner providing legal aid services must:

- a. *(for individual Panel Certifiers) maintain overall responsibility for the matter, and ensure that the client is aware of this responsibility*

The file contains records that that within five days of the grant of legal assistance being approved the practitioner advised the client of their full name and contact details and that they either have conduct, or are supervising the conduct of, the client's matter.

- b. *ensure that all communication with the client is appropriate to the client's age, maturity, education, literacy, past experiences and cultural and social circumstances*

Files contain records of communications with clients.

File records reflect, at an early stage in the life of the matter, the practitioner's assessment of any special needs a client may have, and note any adjustments to usual communication modes which will be made to appropriately cater for the client's special need. Consideration should be given to the client's age, maturity, education, literacy, past experiences and cultural and social circumstances.

For example, VLA would consider this standard not met if a file showed that the practitioner had relied purely on written communication for a client who has advised that they had literacy problems.

- c. *obtain a detailed personal history from the client that will facilitate the practitioner being aware of relevant issues affecting the client's legal problem or particular needs, for resolution or referral as appropriate*

The file contains records that as part of the initial interview with the client (or as soon as practicable), the practitioner discussed and recorded details of the client's personal history which may be relevant to their current situation, for example:

- prior criminal history (if relevant)
- family obligations (if relevant)
- health concerns (if relevant)
- any specific instructions, such as mode of communication, authority to discuss their legal matter with others.

- d. *provide the client with sufficient information to enable them to effectively understand the process, participate in the proceedings, make informed decisions and provide instructions*

The file contains records that shows that the practitioner has:

- provided advice in writing (where possible and unless instructed otherwise by the client) or kept a file note of the advice provided to the client
- has allowed the client as much time as reasonably possible to make a decision
- included the following information in advice given to the client:
 - dates of all hearings
 - the material evidence

- risks
 - the law
 - legal processes and procedures
 - admissibility of evidence
 - costs or liability
 - merits of settlement and any opportunities to resolve the matter
 - the progress of the matter
 - allowed the client as much time as reasonably possible to make a decision.
- e. *obtain the client's instructions at each stage of a matter and before the next significant date*

The file contains records:

- of all instructions given by the client at each stage of the matter
- of the practitioner's efforts to obtain the client's instructions in advance of significant dates during the course of a matter.

VLA would consider this standard has not been met if advice and instructions were provided for the first time on the day of the court hearing. This is especially significant where the client is a child or has other special needs which requires preparation in advance of the hearing.

- f. *consider whether any special safety arrangements are required and make any necessary arrangements, particularly when working with clients affected by or at risk of family violence*

The file contains records that show:

- that the practitioner considered the need for special safety arrangements, and the client's instructions on the issue
- that the practitioner took extra care to avoid accidental disclosure of the client's personal details, for example by obtaining orders to suppress client details and/or redacting client details as appropriate
- that the practitioner identified the need for and made safety arrangements where they reasonably should have
- what, if any, special arrangements have been made, including record of notifying relevant parties.

- g. *provide the client with regular progress reports at each stage, including a final outcome report*

The file contains records that the practitioner:

- provided advice to the client in writing (where possible and unless instructed otherwise by the client)
- recorded all instructions given
- provided the client with:
 - a report of the status of the matter after any significant date or development in the matter
 - in the absence of any significant date or development, an update on the status of the matter on at least a two-monthly basis

- when a final outcome has been reached:
 - made personal contact by means of a meeting, phone call or video conference, OR ensured that counsel made personal contact, where counsel appeared
 - written to the client within five business days, confirming the outcome and any consequent rights and obligations.

For criminal law matters

A letter containing formal advice on appeal rights must be sent to the client within 10 days.

h. not solicit another practitioner's client

In the event of an allegation that the practitioner has solicited another practitioner's client, VLA would expect a practitioner's file to show:

- contemporaneous notes which record details of any contact the practitioner had with the client before the transfer was requested and of why the client sought a transfer of their matter to the practitioner
- written correspondence to the original practitioner advising of the request for a transfer
- written request to VLA setting out the full reasons for the transfer, including an explanation of the client's dissatisfaction with the previous practitioner, why the transfer is appropriate, and how any risks to the efficient running of the matter will be mitigated.

i. protect the client's privacy except where the practitioner is required to disclose information during the course of their professional obligations

The practitioner will handle client files sensitively in public spaces, including concealing the client's name and personal details from view of other people.

The practitioner must properly dispose of documents which contain confidential client information and not re-use paper on which another client's confidential information is recorded.

The practitioner must obtain and keep a record of the client's instructions explicitly authorising release of their confidential information to other parties, or under any circumstances that are not already covered by the requirements of the [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](#), the [Legal Aid Act 1978](#) or the [Privacy and Data Protection Act 2014 \(Vic\)](#).

When communicating with clients in custody, the practitioner will ensure the client's confidentiality by using the appropriate law practice stationery or digital templates when corresponding with the client.

*j. Where possible, not interview an **adult** client in the presence of a child (unless in exceptional circumstances including, for example where the child is an infant below one years old or when it is impractical to reschedule without undue distress)*

The file contains records of the practitioner's interviews with the client, including a record of the attendees and their relationship to the client. If a child(ren) was present, the file contains records of the exceptional circumstance(s).

*k. follow up with a non-responsive **adult** client (or nominated representative) at least twice, and comply with court or tribunal requirements governing withdrawal and notify VLA before closing the file*

The file contains records:

- of all attempts to follow up with the client, including date, time and method of contact
- that the court or tribunal has been notified of the practitioner ceasing to act and that all relevant court or tribunal notices have been filed
- that VLA was notified of the practitioner ceasing to act.

Note: attempts to make contact should have regard to whether the client has a disability, is homeless or has language or literacy problems. For example, writing to a client who is homeless may not be an effective way of making contact quickly.

- l. follow up with a non-responsive **child** (or nominated representative) at least two times, comply with court or tribunal requirements governing withdrawal and notify VLA before ceasing to act*

The file contains records:

- of all attempts to follow up with the client, including date, time and method of contact
- that the court or tribunal has been notified of the practitioner ceasing to act and that all relevant court or tribunal notices have been filed
- that VLA was notified of the practitioner ceasing to act.

Note: attempts to make contact should have regard to whether the client has a disability, is homeless or has language or literacy problems. For example, writing to a client who is homeless may not be an effective way of making contact quickly.

- m. engage constructively with other party/ies (or nominated representative) and service providers throughout the matter to best advance the client's case and allow proper consideration of issues and proposals to resolve the matter*

The file contains records which shows that the practitioner has:

- kept records of all communication with other party/ies and service providers about the matter
- responded to requests and communication within a reasonable timeframe, allowing enough time for proper consideration
- provided requested information as appropriate
- presented all reasonable options for resolving the matter in a way that advances the client's interests
- considered how options for resolving the matter presented by other parties advanced the client's interests, and record advice to and instructions from the client on this issue accordingly
- revisited the options, advice and instructions as appropriate over the course of the matter
- has not unreasonably delayed consideration of options for resolving the matter and has not unreasonably delayed advising the client and seeking instructions.

3.4 Measures for briefing counsel practice standards

When engaging counsel on a legally aided matter, a practitioner must:

- a. ensure counsel accepts the relevant terms of the grant of legal assistance including the fees payable before engaging their services*

The file contains records:

- which shows that the practitioner has informed counsel that the matter is legally aided, and that counsel has accepted the applicable fee before counsel's services were engaged
- that the practitioner has explained VLA's direct payment system to counsel, and that counsel has accepted this payment system.

b. make all reasonable efforts to ensure counsel has the necessary skill, expertise and competence to represent the client in the matter and in any potential appeal

The file contains records that demonstrates that the practitioner gave sufficient consideration to counsel's skill, expertise and competence to undertake the matter to the required standard.

The file or any other information in VLA's records, does not contain any information that the practitioner should reasonably have determined that counsel lacked the skill, expertise or competence in the area of law and jurisdiction.

For example, VLA might consider this standard not met if the file showed that:

- the practitioner engaged counsel with experience exclusively in family law in a criminal matter
- the court criticised counsel's conduct, and the practitioner failed to take steps to consider and, if appropriate, address the criticism, including considering whether new counsel should be engaged.

c. brief counsel with sufficient time to allow counsel to adequately prepare the matter

The file contains records that the practitioner has:

- where the matter is listed in a metropolitan court location, provided counsel with the brief at least three working days before the next court date, where the court listing allows, or, made a file note if the court listing does not allow this
- where the matter is to be listed in a rural court location, provided counsel with the brief as soon as practicable and at least seven days before the circuit dates in which the matter is likely to be listed.
- provided counsel with an explanation of any material that is not yet included but will be provided later.

Briefs to counsel for indictable crime matters

For contested committals the brief must be provided within 14 days of the Committal Mention hearing.

For trials the brief must be provided within 30 days of receipt of the Depositions or at least 30 days before Final Directions Hearing, whichever is sooner.

d. provide a sufficiently detailed written brief to counsel which includes a forensic analysis of the matter, a legal analysis of the matter, the case strategy, the client's instructions and any other relevant information

Briefs to counsel for **all matters** must include:

- a back-sheet with the practitioner's name, VLA's ATLAS reference number for the matter and the applicable fees
- the purpose of the brief, including what counsel is briefed to do and any expectations about cost management

- confirmation of any instructions or case strategy that the practitioner and counsel discussed verbally
- whether the practitioner expects counsel to meet or communicate with the client directly, including the client's contact details
- any legal and/or evidentiary issues
- any relevant authorities of unusually high precedential value that counsel may not already know
- any existing orders
- details of any safety plans or security issues
- the client's personal history, including any issues related to the client's age, maturity, education, cultural and social circumstances, and past experiences that affect their ability to communicate, access services, provide instructions and/or understand legal advice
- all relevant information for the type of matter as listed below.

The practitioner is expected to retain a copy of the brief and key documents on the file.

Briefs to counsel for Commonwealth family law, child support and independent children's lawyer (ICL) matters must also include:

- Case strategy, including a case overview, legal and evidence analysis of the matter, the client's instructions and any other relevant information
- It is **mandatory** for VLA staff lawyers with four years or less family law practice experience to annex a completed case strategy plan by using VLA's [Case Strategy Plan Tool](#). Other lawyers can choose how they meet this standard. VLA **highly recommends** the use of this practice tool and that this be included in the brief to counsel.
- court, hearing date and time
- name/s and role/s of parties
- contact details for the client, practitioner and counsel
- details of relevant relationships
- details of the child/ren, including name/s, date/s of birth and current care arrangements
- filed documents and relevant reports
- history of proceedings, including engagement in alternative dispute resolution
- orders sought
- time limits
- witnesses
- instructions
- service of applications (child support matters only)
- paternity (child support matters only)
- details of the major issues in dispute

- the view of the ICL and reasons for that view (or, if ICL does not have a view, reasons for not having a view) (ICL and parenting matters only).

Briefs to counsel for summary crime matters must also include:

- Brief analysis and case strategy
- It is **mandatory** for VLA staff lawyers to document this by completing the [Brief Analysis and Case Strategy quality tools](#). Using this tool is **highly recommended** for private practitioners.
- court and day of proceeding
- names of any co-accused (and details of their representation and position adopted, if known)
- details of case
- stage of proceedings
- charges
- instructions
- history of proceedings and any settlement negotiations
- client's background and plea material
- reports
- prior criminal history
- pre-sentence detention
- fees and related structure
- bail conditions/issues

Briefs to counsel for indictable crime matters must also include:

(Where the brief is for a **contested committal**)

- memorandum, including documented brief analysis and case strategy
- It is **mandatory** that VLA staff lawyers document this by completing the [Brief Analysis and Case Strategy](#) quality tools. This is **highly recommended** for private practitioners.
- procedural history, covering
 - the chronology of the case including interview, charge, remand and bail
 - negotiations with the prosecution, including significant correspondence (letters, emails and file notes) between the parties
- court documents, including case direction notices, bail documents, other notices (tendency, coincidence, hearsay, prior sexual activity)
- brief of evidence including photographs, CD/DVDs and other exhibits
- further disclosure via Form 32 process, subpoena or FOI.
- This must be provided within 14 days of the committal mention hearing.

(Where the brief is for a trial)

- memorandum, including documented brief analysis, case strategy and trial preparation

It is **mandatory** that VLA staff lawyers, document this by completing the [Brief Analysis, Case Strategy and Trial Preparation Review](#) quality tools. This is **highly recommended** for private practitioners.

- procedural history covering:
 - the chronology of the case, including interview, charge, remand, bail, court events
 - negotiations with prosecution, including significant correspondence (including emails) between the parties
- court documents: indictment, prosecution opening and defence response, notices (case direction, tendency, coincidence, hearsay, prior sexual history and any other relevant notices)
- the witness list in the order provided by the Crown with the indictment, with tabbed sections for each witness containing:
 - witness statement(s), including handwritten statements
 - committal transcript regarding witness
 - notes made by the witness
 - any prior trial transcript
 - exhibits relevant to that witness
- record of client interview, proof of evidence/instructions from client, client expectations, prior convictions
- defence evidence, including proofs of evidence and statements or reports of defence witnesses
- exhibits, including exhibit lists, descriptions of exhibits and copies of documentary exhibit plan

Note: depositions should be provided in hard copy and electronic form (on disc) given that it is not yet practical to run a trial with only an electronic version.

This must be provided within 30 days of receipt of depositions or at least 30 days before final directions hearing, whichever is sooner.

VLA highly recommends the following format be applied to indictable crime briefs:

- using two-ring lever arch binders to enable counsel to easily add materials as the case develops
 - using tabs to ensure papers are well organised and the right document to be located quickly
 - using single-sided pages
 - including an index of documents in the brief.
- e. *attempt to maintain continuity of counsel for the entire matter by briefing counsel at the earliest opportunity for each stage of the matter*

Brief must be provided to counsel as early possible (at least three working days before the next court date unless specified otherwise in the measures for practice standards 3.4 c or 3.4 d).

The file contains records which shows that the same counsel was used throughout the matter or, where the same counsel was unavailable, a file note provides sufficient detail of why it was necessary to brief new counsel.

The practitioner is responsible for adequately managing the case handover to new counsel.

- f. ensure counsel is kept informed of developments relevant to the matter and is provided with new materials immediately*

The file contains records that counsel was advised immediately in writing of any new developments in the matter and provided with new materials as they became available.

- g. maintain regular contact with counsel in order to keep up-to-date with the progress of the matter, outcomes of any appearances and counsel's overall conduct of the matter, including any need to request grants or extensions of legal assistance*

The file contains records that shows that the practitioner has:

- communicated regularly with counsel, at least after each legal event
- communicated with counsel about any necessary applications for grants or extensions of grants of legal assistance for the matter.

For indictable crime matters only

Counsel's '[Committal Report and Trial Preparation Plan](#)' was placed on file five days after a contested committal or a straight hand up brief plea of not guilty.

3.5 Measures for file management practice standards

When managing files that are subject to a grant of legal assistance, a practitioner must:

- a. keep files (including electronic files) organised in such a way that if anyone else assumes management of, audits, or reviews the file, that person can immediately find key information about the matter, including important dates and deadlines*

File includes, in logical or chronological order (preferably in separate sections) all:

- court documents served or filed
- expert reports
- proofs of evidence
- correspondence with client
- file notes of all attendances by phone, video link or in person. These must be clear and legible and include:
 - date
 - type of attendance
 - name of the person spoken to
 - name of the person making the file note (if not the practitioner with usual conduct of the file)
 - key details of the conversation.
- brief/s to counsel
- up-to-date client instructions (confirmed or revised, where appropriate, as the matter progresses)
- legal advice and analysis

- correspondence (electronic and/or hardcopy)
- documentation related to the grant of legal assistance, including:
 - assessment of merit (including all documents used to support assessment and, preferably, completed worksheet)
 - proof of means
 - records of disbursements
- records of all court, tribunal, ADR or FDRS attendances which include, as applicable:
 - names of adjudicator/s, counsel and parties present
 - the capacity in which the practitioner attended
 - outline of negotiations or submissions made
 - outline of orders or directions made
 - duration of attendance
- up-to-date records of any negotiations or alternative dispute resolution underway.

For indictable crime matters only

Files must also include fully completed Indictable Crime [Checklist/s](#) Brief Analysis and Case Strategy and Committal Report and Trial Preparation Plan, as applicable, placed on file.

This is **mandatory** for VLA staff lawyers, and **highly recommended** for private practitioners.

- b. ensure that the file contains documented forensic and legal analysis of the matter as well as the case strategy and the client's instructions*

The file contains a written forensic and legal analysis of the matter and case strategy, and client instructions.

For indictable crime matters only

Files must also include fully completed Indictable Crime [Checklist/s](#), Brief Analysis and Case Strategy and Committal Report and Trial Preparation Plan, as applicable, placed on file.

This is **mandatory** for VLA staff lawyers and **highly recommended** for private practitioners.

For Commonwealth family law matters (excluding child support)

A completed [Case Strategy Plan](#) on the file can demonstrate that this standard has been met.

Using VLA's Case Strategy Plan tool is **mandatory** for VLA staff lawyers with four years or less family law practice experience. Other lawyers can choose how they evidence this work on their file. VLA **highly recommends** the use of the Case Strategy Plan tool.

- c. ensure that all important documents are easily identifiable in the file, and the file is maintained in chronological or other logical order*

The file contains records that shows that the practitioner has:

- placed all important documents on file (see measure for standards 3.5 a)
- placed and/or marked them in such a way that they can be quickly located and identified
- grouped documents in logical or chronological order (preferably in separate bundles or sections on the file).

d. *clearly indicate any document in draft form and remove all obsolete drafts from the file*

Any drafts on the file are marked as such and there are no obsolete drafts on file (ie drafts which are clearly no longer relevant or used as a reference).

e. *retain files in accordance with legislative requirements*

The practitioner must be able to produce or identify the location of a file or, if it has been destroyed, produce documentation consistent with record-keeping obligations.

4. Measures for practice standards for specific areas of law

In addition to the general practice standards, a practitioner providing legal aid services must adhere to **all** specific practice standards that apply to the matter and/or all applicable client characteristics.

These measures support the practice standards for specific areas of law.

4.1 Measures for criminal law practice standards

A practitioner providing legal aid services for a criminal law matter must:

a. *consider whether it is appropriate to apply for:*

- *bail/bail variation*
- *a suppression order*
- *orders for hearings to be conducted in closed court*
- *a discontinuance of the proceedings*

The file contains records that shows that:

- where it would be reasonable to consider making an application, the practitioner has done so, and has made a file note (or other written record) to document this consideration
- (for bail applications) the practitioner has kept a record of having considered or made an application within 14 days of receiving instructions to act or the client being remanded in custody upon revocation of bail, or of having considered or made an application for trial bail prior to or at committal for trial
- (for applications for discontinuance) practitioner has considered or made an application within 21 days of committal or of service of the brief of evidence or the hand-up brief

For indictable crime matters only

This can be documented by fully completing the appropriate [Indictable Crime Checklist](#). This is **mandatory** for VLA staff lawyers and **highly recommended** for private practitioners.

b. *consider whether it is appropriate to arrange for an assessment for mental impairment*

The file contains records that shows that the practitioner has considered the appropriateness of arranging for an assessment for mental impairment where the client's presentation or the evidence (or the combination of both) reasonably raise a threshold issue of mental impairment.

For indictable crime matters only

This can be documented by fully completing the appropriate [Indictable Crime Checklist](#). This is **mandatory** for VLA staff lawyers and **highly recommended** to private practitioners.

c. *consider whether it is appropriate to arrange for an assessment for fitness to plead*

The file contains records that shows that the practitioner has considered the appropriateness of arranging for an assessment for fitness to plead where the client's presentation or the evidence (or the combination of both) reasonably raise a threshold issue of fitness.

For indictable crime matters

This can be documented by fully completing the appropriate [Indictable Crime Checklist](#). This is **mandatory** for VLA staff lawyers and **highly recommended** to private practitioners.

- d. provide the client with a copy of the evidence within a reasonable time of receiving it, unless the client has instructed otherwise*

The file contains a letter from the practitioner to the client enclosing copy of the brief, and records showing that the practitioner has provided client with any additional evidence received.

- e. consider the case strategy from the commencement of proceedings*

The file contains records that demonstrates brief analysis and case strategy considerations documented throughout handling of matter.

For indictable crime matters only

This can be documented by fully completing the [Brief Analysis and Case Strategy templates](#). This is **mandatory** for VLA staff lawyers and **highly recommended** for private practitioners.

- f. immediately following sentence, conduct a client conference in person, to explain the sentence and provide advice about appeal prospects*

The file contains records of:

- the practitioner's, or counsel's conference with the client following sentence
- written advice from the practitioner to the client (where possible and unless instructed otherwise by the client) immediately following sentence confirming the advice and information provided during the conference.
- where it is not possible to confer with the client in person following sentence, the file records should explain why a conference was not possible.

- g. include advice about prospects of appeal with the final outcome report to the client*

The file contains records:

- of the advice about the prospects of any appeal that was provided to the client with the final report
- of the instructions obtained from the client in relation to any appeal
- of how those instructions were actioned by the practitioner
- that the advice was provided to the client within 10 days of the final outcome.

4.2 Measures for Commonwealth family law, child support and State child protection practice standards

A practitioner providing legal aid services for a Commonwealth family law or child support matter or a state child protection matter must:

- h. promote a co-operative approach to resolving the dispute taking into account relevant safety considerations of either party and any child/ren*

The file contains records of any negotiations, which demonstrate a co-operative and safety-conscious approach.

For example, in a family law matter where there is a history of family violence, negotiations should include consideration of appropriate change over location.

- i. proactively attempt to narrow the issues in dispute to encourage early resolution where appropriate*

The file contains records of attempts to narrow the issues in dispute.

- j. consider whether it is appropriate to arrange for alternative dispute resolution (ADR) including family dispute resolution (FDR) for Commonwealth family law matters and conciliation conferences in State child protection matters, and reconsider at key stages of the matter*

The file contains records:

- of consideration of ADR/FDR at the outset and at key stages of the matter, including providing advice to the client, taking instructions and arranging for ADR/FDR where relevant
- that the practitioner understands the purpose of ADR/FDR and has prioritised the benefits to the client when considering ADR/FDR
- that the practitioner has provided advice and sought instructions about ADR/FDR when it will be of most benefit to the client and has not unreasonably delayed ADR/FDR.

- k. consider whether it is appropriate to engage with therapeutic court processes and reconsider at key stages of the matter*

The file contains records:

- of consideration of therapeutic court processes at the outset and at key stages of, or developments in, the matter, including providing advice to the client, taking instructions and arranging for engagement with the therapeutic court process where relevant
- that the practitioner understands the purpose of therapeutic court processes and has prioritised the benefits to the client when considering engagement with these processes
- that the practitioner has provided advice and sought instructions about engaging with these processes when it will be of most benefit to the client and has not unreasonably delayed engaging with these processes.

- l. for Commonwealth family law matters, be familiar with and follow the Best Practice Guidelines for Lawyers Doing Family Law Work (prepared by the Family Law Council and Family Law Section of the Law Council of Australia)*

The file contains records that the practitioner has followed the [Best Practice Guidelines for Lawyers Doing Family Law Work](#)

- m. ensure effective preparation for litigation that includes advising clients about requirements for full and frank disclosure, articulating the issues in dispute, legal and evidence analysis, case strategy planning, quality drafting and comprehensive and timely briefing of counsel.*

The file contains records that show effective preparation for litigation. In Commonwealth family law matters, practitioners can demonstrate good preparation by having evidence on file of use of the [family law practice tools](#), and in particular the [Case Strategy Plan](#) and the [Litigation Preparation Checklist](#).

Using VLA's [Case Strategy Plan](#) tool is **mandatory** for VLA staff lawyers with four years or less family law practice experience. Other lawyers can choose how they evidence this work on their file. VLA highly recommends the use of the Case Strategy Plan tool.

***Measures c, d, e and f do not apply to independent children's lawyers.**

4.2.1 Alternative dispute resolution

A practitioner providing legal aid services for a matter that has been referred to ADR must:

- a. *for Commonwealth family law matters, be familiar with and follow Part 2 of the [Best Practice Guidelines for Lawyers Doing Family Law Work](#)*

The file contains records that the practitioner has acted consistently with Part 2 of the [Best Practice Guidelines for Lawyers Doing Family Law Work](#).

- b. *for child protection matters, be familiar with and follow the [Guidelines for Conciliation Conferences](#)*

The file contains records that the practitioner has acted consistently with [Guidelines for Conciliation Conferences](#).

- c. *consider whether the matter is suitable for ADR/FDR and whether the client is able to participate effectively in the ADR/FDR process, taking into account any disadvantage or special needs in relation to either the client or the other party*

Where the matter was not suitable for ADR/FDR and/or the client was unable to participate effectively in the ADR/FDR process, the file contains records of the reasons for this, taking into account any disadvantage or special needs in relation to either the client or the other party.

- d. *promote a constructive negotiation environment that promotes safe and child-focused outcomes, whilst best advancing the client's goals*

VLA encourages practitioners to keep a written record of any issues that may give rise to a complaint about the practitioner's handling of the matter or participation in the ADR process in order to assist the practitioner to meet the obligation to respond to any complaints arising. The practitioner must have addressed any issue/s adequately.

- e. *ensure effective preparation for conferences at Victoria Legal Aid Family Dispute Resolution Service (FDRS) and conciliation conferences in State child protection matters*

The file contains records that the practitioner has:

- provided FDRS with requested documents promptly
- met with their client prior to an FDRS conference to take instructions, provide legal advice and prepare for participation in an FDR conference
- acted consistently with the '[Guide for Lawyers at Victoria Legal Aid Family Dispute Resolution Service](#)'

***All above responsibilities do not apply to independent children's lawyers.**

4.2.2 Independent children's lawyers

A practitioner legal aid services as an Independent Children's Lawyer (ICL) in family law matters must:

- a. *be familiar with and follow the [Guidelines for Independent Children's Lawyers](#), including guidelines relating to:*

- *the role of the ICL*
- *the relationship between the ICL and the child/ren*
- *general procedures to be followed when an ICL has been appointed*
- *family violence and abuse*
- *cross-cultural and religious matters*
- *Aboriginal and Torres Strait Islander children*
- *children with disabilities*
- *special medical procedures and other parens patriae/welfare jurisdiction cases*

The file contains records that the practitioner has acted consistently with Part 2 of [Guidelines for Independent Children's Lawyers](#)

- b. *consider whether it is appropriate to arrange for alternative dispute resolution (ADR) including family dispute resolution (FDR) and reconsider at key stages of the matter*

The file contains records:

- of consideration of ADR/FDR at the outset and at key stages of the matter, including arranging for ADR/FDR where relevant
- that the ICL understands the purpose of ADR/FDR and has prioritised the benefits to the child/ren when considering ADR/FDR
- that the ICL has not unreasonably delayed ADR/FDR.

- c. *consider whether it is appropriate to engage with therapeutic court processes and reconsider at key stages of the matter*

The file contains records:

- of consideration of therapeutic court processes at the outset and at key stages of, or developments in, the matter, including arranging for engagement with the therapeutic court process where relevant
- that the ICL understands the purpose of therapeutic court processes and has prioritised the benefits to the child/ren when considering engagement with these processes
- that the ICL has not unreasonably delayed engaging with these processes.

- d. *ensure effective preparation for ADR/FDR conferences which includes providing all documents relevant to the issues in dispute to ADR/FDR, liaising with the ADR/FDR case manager, and acting consistently with the 'Guide for Lawyers at Victoria Legal Aid Family Dispute Resolution Service'*

The file contains records that the ICL has:

- considered a referral to ADR/FDR at the earliest possible stage
- provided relevant documents promptly to ADR/FDR
- appropriately communicated with the ADR/FDR case manager about the management of the case having regard to the issues involved.

- e. *ensure effective preparation for litigation, consistent with the [Guidelines for Independent Children's Lawyers](#), which includes case strategy planning, identifying and obtaining relevant*

documentation, organising the preparation of appropriate reports and arranging for relevant witnesses to give evidence, quality drafting, and comprehensive and timely briefing of counsel

The file contains records that show effective preparation for litigation. ICLs can demonstrate good preparation by having evidence on file of use of VLA's ICL [practice tools](#) and in particular the [Case Strategy Plan and the Litigation Checklist](#).

f. maintain personal carriage of the matter (unless exceptional circumstances exist)

The file contains records of:

- who has been responsible for undertaking tasks on the matter
- where the ICL did not have personal carriage of the matter, contain records of the reasons for not being able to maintain personal carriage of the matter
- how the ICL ensured that the alternative arrangements were appropriate in the circumstances
- who undertook any appearances, if the appearance was not made by the appointed ICL personally.

g. personally appear as an advocate wherever possible, and if not appearing personally the same counsel should be briefed wherever possible

The file contains records of:

- the reasons for not personally appearing as advocate, if applicable
- how the ICL ensured that alternative arrangements were appropriate in the circumstances
- comprehensive and timely briefing of counsel.

h. where appropriate meet with the child/ren unless:

- The child/ren is/are under school age.
- There are exceptional circumstances, for example where there is a risk of system abuse or other investigations involving the child/ren, or
- There are significant practical limitations, for example geographic remoteness.

The assessment about whether to meet with the child/ren and the nature of the meeting is a matter for the ICL. An assessment may be made in consultation with any Family Consultant or other expert involved in the case.

The file contains records of detailed contemporaneous file notes about the basis for the decision. If the practitioner meets with the child/ren, the file contains records of:

- of when and where the practitioner met with the child/ren
- of who was present during any meetings with the child/ren
- if there were others present, an explanation of why persons other than the child/ren were present and how this was managed by the ICL.

i. Where the ICL meets with the child/ren, this should be done without the presence of the parties to the proceedings (including relevant third parties concerned with the care or welfare of the child), unless there are compelling reasons not to do so.

- If an ICL does not meet with the child, detailed contemporaneous file notes about the basis for this decision must be recorded on the file.

The file contains records of detailed contemporaneous file notes about the basis for the decision. If the practitioner meets with the child/ren, the file contains records of:

- of when and where the practitioner met with the child/ren
- of who was present during any meetings with the child/ren
- if there were others present, an explanation of why persons other than the child/ren were present and how this was managed by the ICL.

j. be aware of mandatory legislative or ethical obligations when a child makes a disclosure

The file contains records that where a child has made a disclosure, the practitioner has:

- recorded the disclosure
- recorded the ICL's assessment and action in relation to that disclosure
- correctly assessed and applied mandatory legislative or ethical obligations.

k. keep a record of the practitioner's analysis and assessment of the best interests of the child/ren based on a consideration of the law, evidence and the facts of the case

The file contains records of analysis and assessment of the case and application of that analysis to the best interests of the child/ren.

l. immediately advise VLA if the practitioner becomes aware of any information that may influence whether one or more of the parties has the ability to pay a contribution towards the cost of the ICL

The file contains records of the practitioner's advice to GQA about the possibility that one or more of the parties has the ability to pay a contribution towards the cost of the ICL.

4.3 Measures for family violence and personal safety intervention orders practice standards

A practitioner providing legal aid services for a family violence and personal safety intervention order matter, must:

a. promote a co-operative approach to resolving the dispute taking into account relevant safety considerations of either party and any child/ren

The file shows that any negotiations demonstrate a co-operative and safety-conscious approach.

For example, negotiations between parties should take place in the absence of the clients.

b. when negotiating the terms of an intervention order, consider any implications that the order would have on any court orders or parenting agreements between the parties

The file contains records that the implications an intervention order may have for any court order or parenting agreements between the parties was considered and reasonably taken into account.

For example, where a client agrees to an intervention order which includes children, the file should demonstrate that the practitioner informed the client of the implications of such an order on any parenting agreements, and:

- has advised the client of the importance of speaking to their family lawyer regarding all conditions of the family violence intervention order, or
- if possible has contacted the client's family law practitioner to discuss the matter.

5. Measures for practice standards relating to specific client characteristics

5.1 Measures for practice standards relating to working with children

When working with a child as either a direct or best interests representative (not as an Independent Children's Lawyer in family law matters) a practitioner must:

- a. *interview or meet with the child in an appropriate location that protects the child's privacy*

The file contains records that the practitioner conducted the interview or meeting in an appropriate and private location.

- b. *meet the child alone as required, namely:*

- *when acting as a direct representative, not discuss confidential matters and/or seek the child's instructions in the presence of other people*
- *when acting as a best interests representative, consider whether it is desirable to meet the child separately from their parent or carer to elicit their views and wishes free from the influence of other people*

The file contains records:

- if acting as a direct representative, that the practitioner's discussions with the child to obtain instructions were not conducted in the presence of other people (including establishing that the child was not in the presence of other people when such discussions occurred by phone or videoconference)
 - if acting as a best interests representative:
 - of when and where the practitioner met with the child
 - of who was present during any meetings with the child with an explanation provided if the practitioner met with the child with another person present and how this was managed by the practitioner
 - if the practitioner has not met with the child separately, of an assessment by the practitioner of whether to meet the child separately and the reasons for not doing so, taking into account the age, maturity and communication ability of the child.
- c. *communicate in a way that is appropriate to the child's age and stage of development and enables the child to understand the proceedings and participate to the extent they are willing and able*

The file contains records that:

- the practitioner explained, and tested the child's understanding of the explanation of:
 - words and concepts relevant to the matter
 - the practitioner's own role and the roles of the magistrate and other lawyers involved in proceedings (eg lawyers acting for the client's parents or other parties). For child protection matters this must also include the role of the Department of Health and Human Services
 - the rules surrounding confidentiality
 - procedures and processes

- consequences of decisions to either provide or not provide instructions (for direct representatives).
 - demonstrate that the practitioner’s communication – both written and verbal – with the child is clear, age-appropriate and does not use jargon.
- d. *when acting as a direct representative for a child:*
- *approach the matter on the assumption that the child has the capacity to provide competent instructions and make informed decisions*
 - *conduct a thorough capacity assessment where there are indications the child may not be competent to provide instructions*
 - *advise the court in cases where the child lacks capacity to instruct*

The file contains records that the practitioner has:

- spent time with the child to establish capacity [evidenced by the child’s understanding of the concepts outlined in measure 5.1(c)]
 - recorded what if any assistance is required to support the child to provide instructions
 - made file notes of all meetings with the child, including notes of any capacity assessment and copies of any checklist or other assessment tool used
 - taken instructions on relevant matters and/or noted any matters on which the child did not provide instructions and the reasons for this
 - advised the court of any assessment that the child may not have the capacity to understand the meaning or consequences of a court order.
- e. *be aware of confidentiality and mandatory legislative or ethical obligations when a child makes a disclosure*

The file contains records that where a child has made a disclosure, the practitioner has:

- recorded the disclosure and any advice provided to, and/or instructions or wishes expressed by, the child about the disclosure
 - correctly assessed and applied confidentiality and mandatory legislative or ethical obligations.
- f. *be aware of any cultural, religious and/or social factors which may be relevant to the outcome of the case, the way the case is conducted, and referrals made*

The file records demonstrate that the practitioner was aware of, or had considered, cultural, religious and social factors that may be relevant to the child’s matter, or any referrals the practitioner has made for the child.

5.1.1 Children in child protection matters

When working with a child in a child protection matter, either as a direct representative or a best interests representative, a practitioner must:

- a. *be familiar with and follow the VLA guide [Representing children in child protection proceedings](#)*

The file contains records that the practitioner has acted consistently with the VLA guide [Representing children in child protection proceedings](#).

- b. *have up-to-date knowledge of all relevant sections of the Children, Youth and Families Act (Vic) 2005 or any subsequent Act, including sections that outline best interests principles, decision-making principles and principles concerning decisions about Aboriginal children*

The file contains records that demonstrate the practitioner has applied an understanding of all relevant sections of the [Children, Youth and Families Act 2005](#) throughout their conduct of the matter including in their communication with the child.

- c. *identify and address relevant protective intervention issues*

File contains records that the practitioner identified any protective intervention issues that were relevant to the matter, such as:

- children's development, attachment and impact of trauma
- cumulative harm
- family violence
- consequences of out of home care
- the importance of connection to culture and community for Aboriginal children
- the importance of religious or cultural background

and have addressed the issue/s adequately. For example, by seeking instructions, providing advice, making appropriate referrals and proposing outcomes and/or seeking conditions that address or mitigate the issue/s.

- d. *when acting as a best interests representative, keep a record of the practitioner's analysis and assessment of the best interests of the child/ren based on evidence and the facts of the case*

The file contains records of analysis and assessment of the case and application of that analysis to the best interests of the child/ren.

5.1.2 Children in criminal law matters

When working with a child in a criminal law matter a practitioner must:

- a. *make enquiries about the child's living arrangements and any involvement with the child protection system, to best represent the child*

The file contains records:

- that the practitioner spoke to the child about their living arrangements and any involvement with the child protection system
- of how the practitioner used this information to best advance the client's interests in their criminal matter

- b. *advise the child about child-specific defences (eg doli incapax) and any diversionary options available to the client*

The file contains records that the practitioner has:

- advised the child in writing (unless instructed otherwise) and using age-appropriate language, of any child-specific defences and diversionary options available and documented any verbal advice
- kept a written record of discussing diversion options with the relevant body or authority.

- c. *advise the child about sentencing hierarchies, types of orders and the release of criminal records in the Children's Court*

The file contains records that the practitioner has provided advice using age-appropriate language about the sentencing hierarchies, types of orders and the release of criminal records in the Children's Court.

- d. *have up-to-date knowledge of sentencing principles under the [Children, Youth and Families Act 2005](#)*

The file contains records that demonstrates the practitioner has applied current sentencing principles when running the matter and providing advice to the client.

For example, where a client is referred to the ROPES program, the file demonstrates that the practitioner made arrangements for the client to be represented on the return date to ensure that the charges were discharged following completion of the ROPES program.

- e. *clearly explain to the child the sentence outcome and appeal options which must be considered in the context of the special jurisdictional issues that apply in the Children's Court jurisdiction*

The file contains records of:

- that the practitioner considered the outcome and appeal options in light of the special jurisdiction of the Children's Court
- the practitioner, or counsel having met with the client following sentence which explained the sentence outcome and appeal options in age-appropriate language
- where it is not possible to confer with the client in person following sentence, the file records should explain why a conference was not possible and what steps the practitioner took to ensure that the client understood the outcome and appeal options.

5.2 Measures for practice standards relating to working with clients in custody

When working with a client in custody or detention a practitioner must:

- a. *take instructions on whether the client wants to attend court events in person or via telecourt*

The file contains records of the instructions provided, and updated from time to time as the matter progresses.

- b. *assist the client, where relevant, with:*

- *custody management issues*
- *contacting family members*
- *any issues in receiving medical treatment*

The file contains records that the practitioner has provided the client with relevant assistance.

- c. *conduct client conferences about evidence and case strategy in person where possible, prior to the court date*

The file contains records that the practitioner has conducted client conferences about evidence and case strategy in person or, where this has not been possible, a written record of the reason/s for not being able to attend in person.

- d. *immediately following sentence, conduct a client conference in person where possible, to explain the sentence and provide advice about appeal prospects*

The file contains records that:

- the practitioner held the conference in person or via video-conference immediately after the sentence
- where it is not possible to confer with the client in person following sentence, the file records should explain why a conference was not possible and what steps the practitioner took to ensure that the client understood the outcome and appeal options.

5.3 Measures for practice standards relating to working with clients with a mental illness or disability

When working with a client with a mental illness or disability, a practitioner must:

- a. maintain an up-to-date knowledge of mental health and disability issues*

Evidence, if requested by VLA, that the practitioner has undertaken professional development in the area within the last two years.

- b. approach the matter on the assumption that the client is competent and has the capacity to provide instructions and make informed decisions*

The file contains records that the practitioner has:

- spent time with the client to establish capacity
- made file notes covering all conferences and/or interviews conducted, including notes documenting the process used to establish capacity
- communicated with the client directly and met with the client alone at least once, unless the client requires that a third-party attends
- kept a record of instructions taken
- acted in accordance with these instructions.

- c. where it is obvious that the client cannot give instructions, consider:*

- *what supports the client needs to make a supported decision, including assistance from any third party*
- *whether it is appropriate and in the client's interest to have a supported or substitute decision-maker appointed*

The file contains records of:

- details of relevant support people in the client's life
- file notes of all conferences and/or interviews with the client and relevant support people
- copies of all capacity assessments and relevant medical reports
- copies of any correspondence with support people or supported or substitute decision-makers, where relevant.

- d. confirm with the client, the client's understanding of the information provided*

The file contains records that the practitioner asked appropriate questions to establish that the client understands the situation and the options available.

- e. conduct the matter in a manner that does not unnecessarily:*

- *cause or increase the client's distrust towards clinicians and/or other medical professionals involved*
- *cause or increase the client's distrust towards family members or carers*
- *damage the client's therapeutic relationship with the treating clinician and/or other medical professionals involved*

The file contains records which note where these risks might present and what the practitioner did to mitigate this risk.

5.4 Measures for practice standards relating to working with clients from a culturally and linguistically diverse (CALD) or Aboriginal or Torres Strait Islander background

These standards cover working with clients from a wide range of cultures and backgrounds. It is essential that practitioners appreciate the unique issues and specific cultural context applicable to the client they are working with and have suitable skill working with clients from that cultural background.

When working with a client from a CALD or Aboriginal or Torres Strait Islander background, a practitioner must:

- be aware of any cultural and/or religious factors which may influence a client's instructions*

The file contains records that the practitioner has given consideration to the client's cultural background when providing advice and when obtaining instructions.

Evidence shows that the practitioner had regard to the cultural factors which were relevant to the client's matter and sought the client's informed instructions. For example, this might include:

- considering any challenges posed by kinship relationships with regard to giving evidence
- considering any challenges posed by cultural obligations which conflicted with obligations to attend court or report to the police
- considering any traditional communication practices which may make closed questioning (yes/no) an unhelpful way of seeking information from a client, and adjusting communication accordingly
- in a separation matter, considering the fact the client may be also arranging a religious divorce (eg *gett* or *talaq*)
- in a parenting matter, obtaining and applying culturally-specific information relevant to the child/ren's best interests
- not applying an inappropriately narrow definition of family, resulting in relationships of people relevant to legal dispute not being considered
- seeking expert evidence or submissions covering culturally-specific information relevant to the matter
- making referral to, or engaging, available third service provider with appropriate experience in matters relating to the cultural or religious group.

For Aboriginal or Torres Strait Islander clients:

In addition to issues outlined above, when working with a client from an Aboriginal or Torres Strait Islander background, the practitioner must demonstrate awareness of how the following factors may impact on the client's instructions:

- the effects of inter-generational trauma, grief and loss
 - how entrenched disadvantage has resulted in significant mistrust of the legal system
 - and have actively worked to gain the client's trust and assisted the client to engage constructively with the legal system.
- b. *be aware of any cultural and/or religious factors which may be relevant to the way the case is conducted and the outcome of the case*

The file contains records that the practitioner has given consideration to the cultural background when conducting the case and providing advice about possible outcomes.

Evidence shows that the practitioner had regard to the cultural factors which were relevant to the client's matter or potential outcomes. For example:

- considering any challenges posed by kinship relationships with regard to giving evidence
- considering any challenges posed by cultural obligations which conflicted with obligations to attend court or report to the police
- considering any traditional communication practices which may make closed questioning (yes/no) an unhelpful way of seeking information from a client, and adjusting communication accordingly
- in a separation matter, considering the fact that the client may be also arranging a religious divorce (eg gett or talaq)
- in a parenting matter, obtaining and applying culturally-specific information relevant to the child/ren's best interests
- not applying an inappropriately narrow definition of family, resulting in relationships of people relevant to legal dispute not being considered
- seek expert evidence or submissions regarding culturally-specific information relevant to the matter
- making referral to, or engaging, available third service provider with appropriate experience in matters relating to the cultural or religious group.

For Aboriginal or Torres Strait Islander clients:

In addition to issues outlined above, when working with a client from an Aboriginal or Torres Strait Islander background, the practitioner must demonstrate awareness of how the following factors may be relevant to the way the case is conducted and the outcome of the case:

- the overrepresentation of Aboriginal people experiencing legal issues, and have addressed this in negotiations and submissions, where relevant
- the effects of inter-generational trauma, grief and loss and have considered this when making submissions or proposing outcomes
- Culturally-specific legislative provisions, court-related programs and policy priorities, and have addressed these in submissions or negotiations or have advised the client about, or assisted the client to engage with, culturally-appropriate streams within the legal system. For example:
 - specific Koori lists and registrars within various courts and tribunals
 - for child protection matters, the Aboriginal Child Placement Principle and the requirement for a Cultural Plan

- for Commonwealth family law matters, provisions of the [Family Law Act 1975](#) covering the cultural rights of Aboriginal children and how these must be considered when forming a view about the best interests of the child in the Commonwealth Family Law jurisdiction
 - for criminal law matters, Koori courts, the Koori intensive bail Support Program and relevant sentencing case law
- c. *ensure any referrals made or engagement of third-party service providers are appropriate to the cultural and/or religious background of the client*

The file contains records that the practitioner has given consideration to the cultural background when making referrals or engaging third party service providers and has offered the client the choice of being referred to a culturally-specific service provider, where available, or chosen a provider with appropriate skill and experience with that cultural group.

6. Measures for firm practice standards

A firm who is a member of a panel established pursuant to s. 29A of the [Legal Aid Act 1978](#) must ensure their firm's continual compliance with the relevant panel entry requirements.

In addition, a panel firm engaging in legal assistance services must:

- a. *have information technology capacity as is reasonably necessary to conduct business with VLA electronically*

The firm can demonstrate that it has and uses information technology capacity as is reasonably necessary to conduct business with VLA electronically, including:

- certifying grants of legal assistance using the ATLAS system
- invoicing and accepting funds electronically
- providing reports on legally aided matters
- communicating with VLA via email
- receiving electronic communications from VLA.

- b. *have adequate case management processes in place to ensure the protection of clients' privacy and to easily identify and report on current legally aided matters being managed by the firm*

The firm can demonstrate that it has case management processes that give the firm oversight of all legally aided matters being undertaken by the firm, protect the client's privacy and allow the firm to generate:

- lists of legally aided files opened and/or closed from a specified date
- lists of the number and types of legally aided matters carried by each practitioner
- reports of final outcomes
- reports of barrister information.

- c. *have adequate systems in place to ensure practitioners working on legally aided matters have the appropriate education, training and skills to work on those legally aided matters*

The firm can demonstrate that it has and uses relevant supporting tools or documentation, such as:

- minutes or log of diary meetings

- records of regular case review meetings
- training plans
- records of individual training.

d. have adequate systems in place to ensure appropriate supervision of practitioners working on legally aided matters

The firm can demonstrate that it has and uses relevant supervision tools, documentation or structures, for example use of the VLA [family law tools](#), a supervision and review plan, records of engagement with supervised staff and/or a corporate culture to support supervision work.

e. develop and maintain a robust and documented conflict of interest policy

The firm can demonstrate that they have developed and use a documented conflict of interest policy that enables practitioners to check for conflicts of interest and to avoid acting where a conflict of interest is involved. The practitioner must retain the documented results of the conflict check on file as evidence they have turned their mind to the issue.

f. have appropriate processes in place to ensure that where an individual certifier or counsel who is briefed in a legally aided matter is unable to fulfil an obligation due to unforeseen circumstances, that a backup is available

The firm can demonstrate that it has and uses appropriate backup arrangements where an individual certifier or counsel is unable to fulfil their obligation in a legally aided matter.

g. have appropriate facilities to provide a private environment for clients

The firm can demonstrate that it has and uses a private space for communicating and engaging with clients in confidence.

For example, it is expected that firms will conduct their business from a professional office facility.

h. have an internal complaints management process in place

The firm can demonstrate that it has and uses a documented complaints process that allows the firm to:

- identify a complainant
- record the complaint in some form of register
- investigate the complaint
- decide on action to be taken
- notify the complainant of the outcome of the investigation.

i. maintain the firm's practitioner and user list on ATLAS to ensure it is always accurate, current and reflects all practitioners working on legally aided matters undertaken by the firm

The firm can demonstrate that:

- all practitioners who work on legally aided matters are on the firm's practitioner and user list on ATLAS and that VLA was informed of any changes within seven days
- the information in the 'who did the work field' on ATLAS for a legally aided file has been accurately recorded.

7. Further information

Who to contact with questions

For more information, contact the Internal Legal Services team – internallegalservices@vla.vic.gov.au

References

- [Legal Profession Uniform Law Application Act 2014 \(Vic\)](#) and the Legal Profession Uniform Law (Victoria)
- [Legal Profession Uniform General Rules 2015](#)
- [Legal Profession Uniform Admission Rules 2015](#)
- [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](#)
- [Legal Profession Uniform Legal Practice \(Solicitors\) Rules 2015](#)
- [Legal Profession Uniform Law Continuing Professional Development \(Solicitors\) Rules 2015](#)
- [LIV Accredited Specialisation Scheme Rules 2015](#) (for accredited specialists)
- [Legal Aid Act 1978](#)– in particular ss. 29 and 30

8. Measures – Variation History

Date of Variation	Measure varied	Variation Type
18 November 2018		
	3.3 (comments)	Variation
	3.3(j)	Variation
	3.5 (numbering)	Variation
	3.5(h)	Variation
	3.5(i)	Variation
	4.1	Variation
	4.2.1(e)	New measure
	4.2.2(b – e), g, h, i, j	New measures
	4.2.2(f)	New measure
	4.2.2(k)	New measure
	4.2.2(l)	New measure
	5.1.1(b)	New measure
28 May 2019		
	3.2(k)	New measure
	3.2(t)	Variation
	3.5 (numbering)	Variation
	3.5(a)	Variation
	3.5(b)	Variation
	5.1(b - f)	New measures
	5.1.1(a)	Variation
	5.1.1(b – d)	New measures
1 January 2022		
	3.2(jj)	New measure
	3.2(kk)	New measure
	3.2(ll)	New measure
	3.3(i)	Variation

	4.2.2(h)	Variation
	4.2.2(i)	Variation