

## 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. These 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.

These practice standards represent the minimum standards expected of practitioners providing legal aid services. The standards are intended to ensure accountability for legal aid services. These standards also aim to help clients understand what they can expect from their lawyer. For many practitioners the practice standards will reflect the way they currently practice.

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

## 2. Purpose and scope

These practice standards supplement existing obligations for legal practitioners under relevant current legislation, regulation and rules governing the legal profession nationally and in Victoria.

There are three parts to these standards:

- general practice standards applicable to all legal aid matters
- specific practice standards applicable to different types of matters and specific client characteristics
- firm practice standards applicable to all law firms undertaking legal aid work.

Practitioners must meet the general practice standards, all specific practice standards relevant to the legal aid matter and to all applicable client characteristics, and the firm practice standards.

For measures that may be applied to meet these standards, including timeframes, please refer to the [Panel Practitioner Practice Standard Measures](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

These 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 [Section 29A panels conditions](http://www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/panels/section-29A-panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/panels/section-29A-panels-conditions>) page on the VLA website.

### 2.1 Definitions

In this document:

**Client** has the meaning of Assisted Person as contained 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. General practice standards

The following standards apply to all practitioners providing legal aid services in all areas of law. Failure to comply with these standards may impact on the practitioner's or firm's eligibility to undertake legally aided matters.

#### 3.1 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 \(Vic\)](http://classic.austlii.edu.au/au/legis/vic/consol_act/lpulaa2014406/) ([http://classic.austlii.edu.au/au/legis/vic/consol\\_act/lpulaa2014406/](http://classic.austlii.edu.au/au/legis/vic/consol_act/lpulaa2014406/)) and the Legal Profession Uniform Law (Victoria)
- [Legal Profession Uniform General Rules 2015](http://www9.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_reg/lpugr2015372/) ([http://www9.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol\\_reg/lpugr2015372/](http://www9.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_reg/lpugr2015372/))
- [Legal Profession Uniform Admission Rules 2015](https://www.legislation.nsw.gov.au/#/view/regulation/2015/240) (<https://www.legislation.nsw.gov.au/#/view/regulation/2015/240>)
- [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](https://www.legislation.nsw.gov.au/#/view/regulation/2015/244) (<https://www.legislation.nsw.gov.au/#/view/regulation/2015/244>)
- [Legal Profession Uniform Legal Practice \(Solicitors\) Rules 2015](https://www.legislation.nsw.gov.au/#/view/regulation/2015/245) (<https://www.legislation.nsw.gov.au/#/view/regulation/2015/245>)
- [Legal Profession Uniform Law Continuing Professional Development \(Solicitors\) Rules 2015](https://www.legislation.nsw.gov.au/#/view/regulation/2015/242) (<https://www.legislation.nsw.gov.au/#/view/regulation/2015/242>)
- [LIV Accredited Specialisation Scheme Rules 2011](https://www.liv.asn.au/pdf/accredited-specialisation/2012specialisationschemerules.aspx) (<https://www.liv.asn.au/pdf/accredited-specialisation/2012specialisationschemerules.aspx>) (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 Act Act 1978](#) and any applicable additional standards and guidelines (including Duty Lawyer guidelines) relevant to the area of law and specific client characteristic.

For more information about how this standard is measured, see [Measures for VLA practice standards](#).

#### 3.2 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
- b. have up-to-date knowledge and understanding of the guidelines for legal assistance and the notes on the guidelines
- c. participate in training as reasonably required by 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

- e. proactively assist and support an applicant to apply 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
- g. inform VLA of any private funding arrangements the practitioner has or has had with the applicant
- h. inform VLA of any private funding capacity the applicant may have, that the practitioner knows about
- i. explain to the client what services will be provided or arranged for under the grant of legal assistance
- j. apply for a grant of legal assistance or an extension of assistance before undertaking any work or engaging third party providers (e.g. experts, barristers)
- k. (for child protection matters) only apply for a grant of legal 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 applicant 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
- 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
- m. keep the client informed of their entitlements, rights and obligations in relation to a grant of legal assistance
- n. notify VLA immediately of anything that may affect the client's entitlement to legal assistance or obligation to pay a contribution to VLA
- o. advise third party providers of the relevant fees fixed by VLA 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
- q. accept all VLA referrals unless prevented by a conflict of interest or other reasonable cause
- r. promptly return to VLA for re-assignment any matter that the practitioner lacks the expertise or capacity to undertake (including any potential appeal)
- 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
- 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
- u. run the matter in the most effective, economic and efficient manner possible
- v. invoice for every billable event or work item at each stage of the matter
- w. make legally aided files and/or other materials available to VLA upon request, in the timeframe requested

- x. seek costs certificates or costs orders where appropriate and, where applicable make any application to the Appeal Costs Board to recover costs
- y. inform VLA of any opportunities to recover costs
- z. contact VLA before making any applications under:
  - section 197 or 357 of the [Criminal Procedure Act 2009](http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/cpa2009188/) ([http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol\\_act/cpa2009188/](http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/cpa2009188/))
  - any state or Commonwealth confiscation legislation where VLA would be an interested party to the proceedings or may be able to recover costs
- aa. notify VLA immediately of any complaint made against them to the Legal Services Commissioner or the Law Institute of Victoria, State or Federal Police or of any investigation commenced by the Legal Services Commissioner or other regulatory bodies
- bb. notify VLA immediately of any claim made against them for professional negligence where the professional indemnity insurer has accepted liability
- cc. assist VLA to resolve any complaint by providing all relevant information to VLA within the given timeframe
- dd. not represent themselves as a VLA staff practitioner or other employee, unless they are one
- ee. inform VLA of any concerns expressed by the court about the conduct of a legally aided matter
- 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
- gg. treat VLA staff with respect and courtesy
- hh. not denigrate or misrepresent VLA
- ii. ensure that dealings with clients, other legal professionals, service providers, the judiciary and other relevant parties are professional and appropriate.
- jj. Use VLA's mandatory worksheet for requesting medical/expert reports into the mental functioning of an offender 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.
- ll. comply with and maintain an up-to-date knowledge of the relevant duty lawyer guidelines.

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

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

### 3.3 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
- 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

- 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
  - 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
  - e. obtain the client's instructions at each stage of a matter and before the next significant date
  - 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
  - g. provide the client with regular progress reports at each stage, including a final outcome report
  - h. not solicit another practitioner's client
  - i. protect the client's privacy except where the practitioner is required to disclose information during the course of their professional obligations
  - j. 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)
  - 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
  - l. follow up with a non-responsive **child** client (or nominated representative) at least twice, comply with court or tribunal requirements governing withdrawal and notify VLA before ceasing to act
  - 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.
- All above responsibilities do not apply to independent children's lawyers.

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

### 3.4 Briefing counsel

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
- 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
- c. brief counsel with sufficient time to allow counsel to adequately prepare the matter
- 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
- e. attempt to maintain continuity of counsel for the entire matter by briefing counsel at the earliest opportunity for each stage of the matter

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

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

### 3.5 File management

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
- 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
- c. ensure that all important documents are easily identifiable in the file, and the file is maintained in chronological or other logical order
- d. clearly indicate any document in draft form and remove all obsolete drafts from the file
- e. retain files in accordance with legislative requirements.

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

## 4. 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.

### 4.1 Criminal law

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
- b. consider whether it is appropriate to arrange for an assessment for mental impairment
- c. consider whether it is appropriate to arrange for an assessment for fitness to plead
- d. provide the client with a copy of the evidence within a reasonable time of receiving it, unless the client has instructed otherwise
- e. consider the case strategy from the commencement of proceedings
- f. immediately following sentence, conduct a client conference in person, to explain the sentence and provide advice about appeal prospects



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

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

## 4.2 Commonwealth family law and child support matters and State child protection matters

A practitioner providing legal aid services for a Commonwealth family law or child support matter or a State child protection 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
- b. proactively attempt to narrow the issues in dispute to encourage early resolution where appropriate
- c. consider whether it is appropriate to arrange for alternative dispute resolution (ADR) including family dispute resolution (FDR) for Commonwealth family law matters or conciliation conferences in State child protection matters, and reconsider at key stages of the matter
- d. consider whether it is appropriate to engage with therapeutic court processes and reconsider at key stages of the matter
- e. for family law matters, be familiar with and follow the [Best Practice Guidelines for Lawyers Doing Family Law Work](https://www.familylawsection.org.au/images/documents/20170720_BestPracticeGuidelines.pdf) ([https://www.familylawsection.org.au/images/documents/20170720\\_BestPracticeGuidelines.pdf](https://www.familylawsection.org.au/images/documents/20170720_BestPracticeGuidelines.pdf))
- f. ensure effective preparation for litigation which 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.

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

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

### 4.2.1 Alternative dispute resolution

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

- a. for family law matters, be familiar with and follow Part 2 of the [Best Practice Guidelines for Lawyers Doing Family Law Work](https://www.familylawsection.org.au/images/documents/20170720_BestPracticeGuidelines.pdf) ([https://www.familylawsection.org.au/images/documents/20170720\\_BestPracticeGuidelines.pdf](https://www.familylawsection.org.au/images/documents/20170720_BestPracticeGuidelines.pdf))
- b. for child protection matters, be familiar with and follow the [Guidelines for Conciliation Conferences](https://www.childrenscourt.vic.gov.au/legal/guidelines-conciliation-conferences) (<https://www.childrenscourt.vic.gov.au/legal/guidelines-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
- d. promote a constructive negotiation environment that promotes safe and child-focused outcomes, whilst best advancing the client's goals
- e. providing legal advice, preparing clients for participation in an FDR conference, and acting consistently with the '[Guide for Lawyers at Victoria Legal Aid Family Dispute Resolution Service](#)'



(<https://www.legalaid.vic.gov.au/information-for-lawyers/practice-resources/family-law-resources>).

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

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

#### 4.2.2 Independent children's lawyers

A practitioner providing 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](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/guidelines-independent-childrens-lawyer) (<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/guidelines-independent-childrens-lawyer>), 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
- b. consider whether it is appropriate to arrange for alternative dispute resolution (ADR) including family dispute resolution (FDR) for Commonwealth family law matters, and reconsider at key stages of the matter
- c. consider whether it is appropriate to engage with therapeutic court processes and reconsider at key stages of the matter
- 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](https://www.legalaid.vic.gov.au/information-for-lawyers/practice-resources/family-law-resources)' (<https://www.legalaid.vic.gov.au/information-for-lawyers/practice-resources/family-law-resources>)
- 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
- f. maintain personal carriage of the matter (unless exceptional circumstances exist)
- g. personally appear as an advocate wherever possible, and if not appearing personally the same counsel should be briefed wherever possible
- 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.

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

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

### **4.3 Family violence and personal safety intervention orders**

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

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

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

## **5. Practice standards for specific client characteristics**

### **5.1 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:

- interview or meet with the child in an appropriate location that protects the child's privacy
- 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
- 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
- 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
- e. be aware of confidentiality and mandatory legislative or ethical obligations when a child makes a disclosure
- 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.

### 5.1.1 Children in child protection matters

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

- a. be familiar with and follow the VLA guide [Representing children in child protection proceedings](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-representing-children-in-child-protection-proceedings-guide.pdf) (<http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-representing-children-in-child-protection-proceedings-guide.pdf>)
- 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
- c. identify and address relevant protective intervention issues
- 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 a consideration of evidence and the facts of the case.

### 5.1.2 Children in criminal law matters

When working with a child client 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
- b. advise the child about child-specific defences (e.g. *doli incapax*) and any diversionary options available to the client
- c. advise the child about 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

- 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.

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

## 5.2 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
- b. assist the client, where relevant, with:
  - custody management issues
  - contacting family members
  - any issues in receiving medical treatment
- c. conduct client conferences about evidence and case strategy in person where possible, prior to the court date
- d. immediately following sentence, conduct a client conference in person where possible, to explain the sentence and provide advice about appeal prospects.

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

## 5.3 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
- b. approach the matter on the assumption that the client is competent and has the capacity to provide instructions and make informed decisions
- 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
- d. confirm with the client, the client's understanding of the information provided
- 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.

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

## 5.4 Working with clients from a 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 and experience working with clients from that cultural background.

When working with a client from a culturally and linguistically diverse (CALD) or Aboriginal or Torres Strait Islander background, a practitioner must:

- a. be aware of any cultural and/or religious factors which may influence a client's instructions
- 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
- c. ensure any referrals made or engagement of third party service providers are appropriate to the cultural and/or religious background of the client.

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

## 6. Firm practice standards

A firm who is a member of a panel established pursuant to [s. 29A of the Legal Aid Act 1978](http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/laa197864/) ([http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol\\_act/laa197864/](http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/laa197864/)) 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
- 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
- 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
- d. have adequate systems in place to ensure appropriate supervision of practitioners working on legally aided matters
- e. develop and maintain a robust and documented conflict of interest policy
- 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
- g. have appropriate facilities to provide a private environment for clients
- h. have an internal complaints management process in place
- 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.

For more information about how this standard is measured, see [Measures for VLA practice standards](http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions) (<http://www.legalaid.vic.gov.au/information-for-lawyers/practitioner-panels/panels-conditions>).

## 7. Further information

### 7.1 Who to contact with questions

For more information, please contact Internal Legal Services via email:  
[internallegalservices@vla.vic.gov.au](mailto:internallegalservices@vla.vic.gov.au)

### 7.2 References

- [Legal Profession Uniform Law Application Act 2014 \(Vic\)](http://classic.austlii.edu.au/au/legis/vic/consol_act/lpulaa2014406/) ([http://classic.austlii.edu.au/au/legis/vic/consol\\_act/lpulaa2014406/](http://classic.austlii.edu.au/au/legis/vic/consol_act/lpulaa2014406/)) and the *Legal Profession Uniform Law* (Victoria)
- [Legal Profession Uniform General Rules 2015](http://www9.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_reg/lpugr2015372/) ([http://www9.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol\\_reg/lpugr2015372/](http://www9.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_reg/lpugr2015372/))
- [Legal Profession Uniform Admission Rules 2015](https://www.legislation.nsw.gov.au/#/view/regulation/2015/240) (<https://www.legislation.nsw.gov.au/#/view/regulation/2015/240>)
- [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](https://www.legislation.nsw.gov.au/#/view/regulation/2015/244) (<https://www.legislation.nsw.gov.au/#/view/regulation/2015/244>)
- [Legal Profession Uniform Legal Practice \(Solicitors\) Rules 2015](https://www.legislation.nsw.gov.au/#/view/regulation/2015/245) (<https://www.legislation.nsw.gov.au/#/view/regulation/2015/245>)
- [Legal Profession Uniform Law Continuing Professional Development \(Solicitors\) Rules 2015](https://www.legislation.nsw.gov.au/#/view/regulation/2015/242) (<https://www.legislation.nsw.gov.au/#/view/regulation/2015/242>)
- [LIV Accredited Specialisation Scheme Rules 2011](https://www.liv.asn.au/pdf/accredited-specialisation/2012specialisationschemerules.aspx) (<https://www.liv.asn.au/pdf/accredited-specialisation/2012specialisationschemerules.aspx>) (for accredited specialists)
- [Legal Aid Act 1978](http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/laa197864/) ([http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol\\_act/laa197864/](http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/laa197864/)) – in particular ss. 29 and 30

## 8. Practice Standards Variation History

Version	Standard varied	Variation Type
<b>18 November 2018</b>		
	3.1	Variation
	3.2 (comments)	Variation
	3.2(cc)	Variation
	3.3(f)	Variation
	3.3(j)	Variation
	3.3(m)	Variation
	4.2(c)	Variation
	4.2(f)	New standard
	4.2(comments)	New
	4.2.1(e)	New standard
	4.2.1(comments)	New
	4.2.2(b – e, g, h, i, j)	New standards
	4.2.2(f)	New standard
	4.2.2(k)	New standard
	4.2.2(l)	New standard
<b>28 May 2019</b>		
	3.2(k)	New standard
	3.2(ii)	New standard
	4.2.2	Variation
	5.1(b – e)	New standards
	5.1(e)	New standard
	5.1(f)	New standard
	5.1.1(a)	Variation
	5.1.1(b – d)	New standards
<b>1 January 2022</b>		
	3.2(jj)	New standard
	3.2(kk)	New standard
	3.2(ll)	New standard
	4.2.2(h)	Variation
	4.2.2(i)	Variation