Family law case management standards

Legal Aid QUEENSLAND

Contents

Introduction

These case management standards (standards) have been prepared to assist Legal Aid Queensland (LAQ) staff and preferred suppliers practising in the family law jurisdiction including the areas of domestic and family violence, and child protection. They cover the following practice areas:

- family law matters generally
- family dispute resolution conferences
- parenting orders and property matters
- arbitration
- family law duty lawyer and family advocacy and support services (FASS)
- acting as an independent children's lawyer (ICL)
- domestic and family violence matters
- domestic and family violence duty lawyer
- party representation in child protection matters, including direct representation
- child protection duty lawyer
- acting as a separate representative — child protection matters.

The standards represent the work expected to be undertaken in representing a client or when acting as an ICL or separate representative. The objective of these standards is to help lawyers achieve efficient and effective practice.

Compliance with the standards is a pre-requisite to ensuring consistency of service delivery to clients and is therefore an important requirement of undertaking legal aid work.

The standards refer to the *Australian Solicitors Conduct Rules 2012* and apply to LAQ lawyers and preferred suppliers.

These standards refer to the Family Court of Australia (FamCA) and the Federal Circuit Court of Australia (FCCA) where appropriate — these courts will be collectively referred to as the 'family law courts.'

These standards refer to the Department of Children, Youth Justice and Multicultural Affairs (Child Safety), the Office of the Child and Family Official Solicitor (OCFOS) and the Director of Child Protection Litigation (DCPL). For ease of reference, they may at times be collectively referred to as "the applicant."

These standards must be read in conjunction with the:

- *Family Law Act 1975* (FLA)
- *Family Law Rules 2004* (FLR)
- *Family Court of Australia Practice Directions*
- *Federal Circuit Court of Australia Act 1999* (FCCAA)
- *Federal Circuit Court Rules 2001* (FCCR)
- *Federal Circuit Court of Australia Practice Directions*
- *Guidelines for Independent Childrens Lawyers (2013)*
- *Domestic and Family Violence Protection Act 2012* (DV Act)
- *Domestic and Family Violence Prevention Rules 2014* (DFVPR)
- *Queensland Law Society (QLS) and LAQ Domestic and Family Violence Best Practice Framework for Legal and Non-Legal Practitioners*, and other *Best Practice Guidelines* published by QLS and LAQ
- *Child Protection Act 1999* (CPA)

- *Childrens Court Act 1992* (CCA)
- *Childrens Court Rules 2016* (CCR)
- *Director of Child Protection Litigation Act 2016* (DCPLA)
- *Magistrates Courts Practice Directions*
- *Director of Child Protection Litigation – Director's Guidelines*
- *Child Safety Practice Manual*
- *Human Rights Act 2019* (HRA)
- relevant *QLS Guidance Statements*
- *Legal Aid Queensland Act 1997* (LAQ Act)
- *LAQ Practice Management Standards – in house* *(LAQ network access required)*
- *LAQ Practice Management Standards - preferred suppliers*
- *LAQ File Management Standards – Family Law Services – litigation support officers* – inhouse

which may be amended from time to time; and other relevant legislation, civil procedure rules and regulations in relation to all areas of family law practice, including the areas of domestic and family violence, and child protection.

Please note if FCCR are insufficient, FLR applies with necessary modification so far as they are capable of application and subject to any FCCA directions (FCCAA s 43). FCCR r 1.05 specifically provides "if in a particular case the rules are insufficient or inappropriate, the court may apply the Family Law Rules, the Federal Court Rules or the *Federal Court (Criminal Proceedings) Rules 2016*, in whole or in part and modified or dispensed with, as necessary." These standards identify the relevant rules to be applied in both courts where possible.

Please also note if CCR do not provide for a matter relating to Childrens Court procedure, the matter may be dealt with by directions made pursuant to CCA s 8.

Right to Information

The *Right to Information Act 2009* (RTI Act) gives broad access to documents of agencies and official documents of ministers, subject to certain restrictions including legal professional privilege. Members of the public have the legal right to apply for access to documents held by government agencies and amendment of personal information held by government agencies.

All documents (both hard copy and electronic) are subject to an application for access under the RTI Act. It is important to maintain good file management systems and ensure the retention and/or destruction of documents complies with the *Public Records Act 2002*.

Any documents created by LAQ employees may be the subject of an access application under the RTI Act. A LAQ document includes but is not limited to all files, emails, post-it notes, file notes, telephone messages, electronic versions of documents, database information, video and audio tapes and photographs. All notes, emails, letters, minutes should be drafted professionally and in accordance with employee obligations under the *Code of Conduct for the Queensland Public Service*, LAQ's *Client Service Standards* and *Australian Solicitors Conduct Rules 2012.*

Information privacy

The *Information Privacy Act 2009* (IP Act) regulates how Queensland Government agencies manage personal information. Under the IP Act LAQ is required to manage personal information in accordance with the 11 Information Privacy Principles.

LAQ employees must be aware of and understand their obligations under the IP Act. Personal information is given to LAQ employees every day. People have the right to expect LAQ employees will respect their privacy

and protect their personal information. This includes clients, partners, and other employees (eg permanent, temporary, casual employees, contractors, service providers etc).

Solicitors' fundamental duties

Solicitors need to be aware of their 'fundamental duties' contained in the *Australian Solicitors Conduct Rules 2012*, including:

- A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.
- A solicitor must also act in the best interests of a client in any matter in which the solicitor represents the client; be honest and courteous in all dealings in the course of legal practice; deliver legal services competently, diligently and as promptly as reasonably possible; avoid any compromise to their integrity and professional independence and comply with these rules and the law.
- A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to – be prejudicial to, or diminish the public confidence in, the administration of justice; or bring the profession into disrepute.
- A solicitor who has given an undertaking in the course of legal practice must honour that undertaking and ensure the timely and effective performance of the undertaking, unless released by the recipient or by a court of competent jurisdiction.
- A solicitor must not seek from another solicitor, or that solicitor's employee, associate, or agent, undertakings in respect of a matter, that would require the cooperation of a third party who is not party to the undertaking.
- A solicitor must not engage in a course of practice, engage in conduct which constitutes discrimination, sexual harassment or workplace bullying.

In-house solicitors should also be aware of their obligations outlined in the LAQ Act and LAQ policies such as the *Code of Conduct for the Queensland Public Service* and LAQ *Client Service Standards (LAQ network access required)*

Barristers' conduct rules

Barristers need to be aware of their fundamental duties contained in the *Bar Association of Queensland Barristers' Conduct Rules (23 February 2018)*:

"The object of these Rules is to ensure that all barristers:

a) act in accordance with the general principles of professional conduct

b) act independently

c) recognise and discharge their obligations in relation to the administration of justice, and

d) provide services of the highest standard unaffected by personal interest.

These Rules are made in the belief that:

a) barristers owe their paramount duty to the administration of justice

b) barristers must maintain high standards of professional conduct

c) barristers as specialist advocates in the administration of justice, must act honestly, fairly, skilfully and with competence and diligence

d) barristers owe duties to the courts, to their clients and to their barrister and solicitor colleagues

e) barristers should exercise their forensic judgments and give their advice independently and for the proper administration of justice, notwithstanding any contrary desires of their clients, and

f) the provision of advocates for those who need legal representation is better secured if there is a Bar whose members:

i. must accept briefs to appear regardless of their personal beliefs

ii. must not refuse briefs to appear except on proper professional grounds, and

iii. compete as specialist advocates with each other and with other lawyers as widely and as often as practicable."

In-house barristers should also be aware of their obligations outlined the LAQ Act and in policies such as the *Code of Conduct for the Queensland Public Service* and LAQ *Client Service Standards (LAQ network access required)*

Human rights

On 1 January 2020, the HRA came into effect. The objects of this Act include:

a) to protect and promote human rights; and
b) to help build a culture in the Queensland public sector that respects and promotes human rights; and
c) to help promote a dialogue about the nature, meaning and scope of human rights.

LAQ is part of the Queensland public sector and has obligations as a public entity to ensure compliance with human rights. This means that the acts and decisions of LAQ must either not limit human rights or only limit human rights to the extent that is reasonable and demonstrably justifiable.

Lawyers must be aware of and comply with obligations under the HRA.

For every action or decision that may impact human rights, consideration should be given to whether a person's human rights have been limited. If a limitation has occurred or is likely to occur, consideration will be given to:

a) the nature of the human right
b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom
c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose
d) whether there are any less restrictive and reasonably available ways to achieve the purpose
e) the importance of the purpose of the limitation
f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right
g) the balance between the matters mentioned in paragraphs (e) and (f).

Where appropriate this consideration should be recorded on the client's file and the client should be provided with legal advice in writing.

LAQ recognises the human rights of our clients and will implement these statutory obligations in our acts and decisions.

In-house lawyers should be aware of LAQ's Human Rights policy *(LAQ network access required)*.

See the Human Rights Commission website for more information.

First Nations

LAQ recognises Aboriginal and Torres Strait Islander people as the first peoples of Australia.

LAQ recognise that lawyers, as an integral part of the justice system in Queensland, can take a leadership role in supporting Aboriginal and Torres Strait Islander people's access to a fairer and more equitable justice system that will ultimately result in better social justice outcomes.

The overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice and child protection systems are significant issues that result from the disadvantage experienced by Aboriginal and Torres Strait Islander people across a number of social, cultural and economic indices.

Geographical isolation and limited or non-existent services in parts of Queensland increases the vulnerability of Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander people represent 3% of the population in Queensland and 34% of the prison population. Children are being removed from families at rates that exceed the peak of the Stolen Generation and are 45 times more likely to experience domestic and family violence.

Lawyers should be aware of and comply with LAQ's *Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients*.

Lawyers must be aware of relevant legislative provisions that apply to Aboriginal and Torres Strait Islander people, which include:

Family law

FLA sets out the principles that are to underpin courts' decisions as to where children should live, who they should have contact with and any other matters that are to be included in parenting orders. The paramount consideration in all decisions about parenting orders is the best interests of the child.

This is determined by balancing the child's right to have a meaningful relationship with both parents and the child's right to be protected from harm.

FLA s 60B(2)(e) states that all children have 'a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).' FLA s 60B (3) provides greater specificity, namely the right of Aboriginal and Torres Strait Islander children:

"e) to maintain a connection with that culture, and
f) to have the support, opportunity and encouragement necessary:

a. to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views, and to develop a positive appreciation of that culture."

When the court is dealing with parenting orders for Aboriginal and Torres Strait Islander children, it must consider the child's right to engage with his or her culture and to share it with other people who share that culture and the likely impact of any proposed parenting orders on that right, FLA s 60CC (3) (g) and (h). This will include consideration of what sort of living and care arrangements best promote this right, including any kinship relationships that may impact on the child, and the child-rearing practices of Aboriginal and Torres Strait Islander families.

Child protection

The Child Placement Principle (CPP), CPA s 5C is applied in administering CPA when working with Aboriginal or Torres Strait Islander children and families. Decisions about an Aboriginal or Torres Strait Islander child must be made in a way that upholds the 5 elements of the child placement principle:

- Prevention - that a child has the right to be brought up within the child's own family and community.
- Participation - that a child and the child's parents and family members have the right to participate in an administrative or judicial process for making a significant decision about a child.
- Partnership - that Aboriginal or Torres Strait islander peoples have the right to participate in significant decisions under the CPA about Aboriginal or Torres Strait Islander children, including the design and delivery of programs and services.
- Placement - that if a child is to be placed in care, the child has a right to be placed with a member of the child's family group.
- Connection - that a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language.

Also see CPA ss 6, 6AA and 6AB – principles about decision making.

Human rights

HRA s 28 states:

(1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.
(2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community: —
    a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
    b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and
    c) to enjoy, maintain, control, protect and develop their kinship ties; and
    d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and
    e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.
(3) Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

Part A — Acting in family law matters generally

A1. Initial interview

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

When providing clients with advice for their family law matters lawyers must provide information required by FLA and FLR (see FLA ss12A–12E).

It is important to prioritise client safety and regularly screen for risk, in accordance with the *QLS and LAQ Domestic and Family Violence Best Practice Framework for Legal and Non-Legal Practitioners*, and other *Best Practice Guidelines* published by QLS and LAQ. These publications provide practical hints and useful information for representing clients affected by violence.

In-house lawyers should conduct a proper risk assessment using LAQ's Domestic and family violence risk assessment resources *(LAQ network access required)*. All lawyers should be aware of the *Queensland Government Common Risk and Safety Framework*. Remember that domestic and family violence can lead to domestic homicide — lawyers have a responsibility to assess the person's safety at this and all other stages of the family law or domestic and family violence proceedings

See the *Family law and domestic and family violence advice* worksheet (Annexure A) which is a comprehensive checklist for giving advice in this area.

Lawyers must be aware of and comply with LAQ's *Language Services Policy* If required, a qualified interpreter should be arranged.

A2. Grant of aid

LAQ is the approving authority for grants of aid. Generally, aid is effective from the date LAQ receives the application. A grant of aid must exist before any work can be done on the file. The lawyer should check the approval letter to determine the nature and appropriateness of the grant of aid. Where the grant of aid is subject to an initial contribution, the lawyer must not commence work until appropriate arrangements have been made with the client for a contribution payment.

Grant of aid confirmation should be provided to the other party or parties to proceedings in line with LAQ Act s 28. This is an ongoing responsibility where the parties to proceedings change.

LAQ will pay for legal services in accordance with LAQ's set schedule of fees less the initial contribution from the client (where applicable). The schedule of fees includes LAQ's Scales of Fees, rules for payment of accounts and claiming guidelines. The lawyer should explain to the client LAQ's retrospective contributions policy and ensure the client signs and returns the Payment of costs letter template prior to commencing work on the file.

If at any time during the course of proceedings a client's grant of legal aid is refused and the lawyer is the solicitor on the court record, that the lawyer must take appropriate steps in that jurisdiction to advise the court and the client they are no longer acting. This may involve filing an appropriate notice or an appearance at the next court date to seek leave to withdraw.

A3. Management of matters

Lawyers should be aware of the *Family Law Council and Family Law Section of the Law Council of Australia's Best Practice Guidelines for lawyers doing family law work (October 2010)*. The guidelines outline that best practice in family law is characterised by:

1. A constructive and conciliatory approach to the resolution of family disputes.
2. The minimisation of any risks to separating couples and/or children by:
    (i) alerting separating couples to treat safety as a primary concern
    (ii) avoiding arguments in front of children, and
    (iii) keeping children out of conflicts arising between separating couples.
3. Having regard to the interests and protection of children and encouraging long-term family relationships.
4. The narrowing of the issues in dispute and the effective and timely resolution of disputes.
5. Ensuring that costs are not unreasonably incurred.

In-house lawyers should refer to the File management standards – litigation support officers to be aware of their file management responsibilities. They should also be aware of litigation support officers' responsibilities.

Following grant of aid approval, an initial letter enclosing a Client information sheet must be sent to the client. The client must be informed of their obligations and rights regarding costs payable for work to be done on their behalf and any rights to recover costs from another party to proceedings.

The lawyer should pay special attention to FLR rr 19.03–19.04 regarding notification to the client. Refer to FCCR Part 21 for the FCCA.

If the matter is urgent and it is not appropriate to send the initial letter to the client, lawyers must give the client a Client information sheet at the first client interview. An appropriate record must appear on the file.

Lawyers must communicate regularly with clients. Standard letters should be used when available. Correspondence sent or received on behalf of the client should be copied and sent to the client. Lawyers must keep copies of all file notes, correspondence sent or received, and all documents received or prepared on behalf of the client on the client's file.

Lawyers should have the client's signed instructions before any significant step on the file and these should be retained on the file.

In addition to being aware of and complying with the *QLS and LAQ Domestic and Family Violence Best Practice Framework for Legal and Non-Legal Practitioners* and other *Best Practice Guidelines* published by QLS and LAQ, lawyers must also read and be aware of the contents of the family law courts' *Family Violence Best Practice Principles* and the *Queensland Government Common Risk and Safety Framework*.

In matters involving domestic and family violence, where possible consider requesting permission to use video link, audio link or other appropriate means to give testimony, make appearances, make submissions, out-of-court electronic means give evidence or adduce evidence from a witness when previously attendances in person were required (see FLA Part XI div 2, FLR rr 5.06– 5.07, 12.12, 16.05, and the FCCAA ss 66–73).

Lawyers must be aware of and comply with LAQ's *Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients*.

Lawyers must be aware of and comply with LAQ's *Best practice guidelines for working with children and young people* and its supporting *framework.* In house staff should honour LAQ's *Service promise to children and young people*

Lawyers must be aware of and comply with LAQ's Language services policy

In cases where a disability may be a factor, lawyers will need to consider whether the client or a party in the matter has legal capacity. This may become an issue where a client has an intellectual disability or cognitive impairment. Clients must have capacity to give lawful competent instructions to lawyers. Lawyers have legal and ethical duties to ensure they do not accept instructions from a client who lacks capacity.

In these cases, lawyers should review and consider information in the *Queensland Handbook for Practitioners on Legal Capacity*, and also consider information about guardianship on the website of the

Office of the Public Guardian. Careful consideration should be given to whether the appointment of a case/litigation guardian is appropriate - see FLR Part 6.3, FCCR div 11.2.

A4. Briefing counsel

In selecting counsel from the private bar, all reasonable endeavours should be made to:

1. Identify female counsel in the relevant practice area,
2. Genuinely consider engaging such counseln
3. Regularly monitor and review the engagement of female counsel, and
4. Periodically report when called upon on the nature and rate of engagement of female counsel.

When applicable, briefs to counsel must contain the following:

a) a logical and chronological index

b) clear instructions to counsel confirming the date of the court event, a summary of the issues in dispute, a list of each parties' witnesses and confirmation of the client's/ICL's/separate representative's instructions

c) copy of all relevant material – including court documentation, file notes, witness statements and correspondence

d) the brief should be marked "Legal Aid Brief" and include details of the grant of aid available for counsel if the client is represented by an in-house lawyer, or the LAQ pro forma invoice if the client is represented by a preferred supplier.

In-house lawyers, when briefing counsel, must comply with the *In-house lawyers briefing counsel policy (LAQ network access required)*.

A5. Appeal

After reasons for judgment are delivered and/or orders are made, lawyers should consider the appropriateness of same and the potential merit for appeal or review.

As appropriate lawyers should discuss the matter with the client including:

- the appeal timeframe
- risk of a less favourable outcome
- potential liability for costs if unsuccessful
- effect of appeal on the execution of order.

All time limits must be observed.

A6. Initial/final contribution

Lawyers must ensure the initial or final contribution has been paid or arrangements have been made for the final contribution payment.

A7. Completion of matter

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

If at any stage in proceedings a lawyer is refused a grant of legal aid to continue to represent their client, they should immediately notify the court and file the appropriate documentation to withdraw. If the time period between legal aid being refused and the next court event does not allow for this formal notification, then it is expected the lawyer will attend the court event and formally withdraw.

The lawyer should ensure all accounts are finalised in a timely manner at the conclusion of the matter.

Lawyers should notify LAQ of the outcome after each grant of aid completion and when submitting their final account for payment and file finalisation. In-house staff will not be able to finalise a file unless a report has been submitted to LAQ Grants on the outcome of each grant of aid.

In-house lawyers should refer to the *File management standards – litigation support officers* to be aware of their responsibilities in closing a file.

A8. General solicitors' duties

Australian Solicitors Conduct Rules – general solicitor duties

A solicitor must follow a client's lawful, proper and competent instructions (r 8.1).

A solicitor must not disclose any information which is confidential to a client and acquired by the solicitor during the client's engagement to any person who is not: a solicitor who is a partner, principal, director or employee of the solicitor's law practice; or a barrister or an employee of or person otherwise engaged by, the solicitor's law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client (see exceptions) (r 9.1).

A solicitor must not knowingly make a false statement to an opponent in relation to the case (including its compromise) and must take all necessary steps to correct any false statement made by the solicitor to an opponent as soon as possible after the solicitor becomes aware that the statement was false (rr 22.1–22.2).

A solicitor must not take unfair advantage of the obvious error of another solicitor or other person, if to do so would obtain for a client a benefit which has no supportable foundation in law or fact (r 30.1).

Unless otherwise permitted or compelled by law, a solicitor to whom material known or reasonably suspected to be confidential is disclosed by another solicitor, or by some other person and who is aware that the disclosure was inadvertent must not use the material and must return, destroy or delete the material (as appropriate) immediately upon becoming aware that disclosure was inadvertent; and notify the other solicitor or the other person of the disclosure and the steps taken to prevent inappropriate misuse of the material (r 31.1).

A solicitor who reads part or all of the confidential material before becoming aware of its confidential status must: notify the opposing solicitor or the other person immediately; and not read any more of the material (r 31.2).

If a solicitor is instructed by a client to read confidential material received in error, the solicitor must refuse to do so (r 31.3).

A solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it (r 32.1).

A solicitor must not deal directly with the client or clients of another practitioner unless: the other practitioner has previously consented; the solicitor believes on reasonable grounds that: the circumstances are so urgent as to require the solicitor to do so; and the dealing would not be unfair to the opponent's client; the substance of the dealing is solely to enquire whether the other party or parties to a matter are represented and, if so, by whom, there is notice of the solicitor's intention to communicate with the other party or parties, but the other practitioner has failed, after a reasonable time, to reply and there is a reasonable basis for proceeding with contact (r 33.1).

A solicitor must not in any action or communication associated with representing a client:

make any statement which grossly exceeds the legitimate assertion of the rights or entitlements of the solicitor's client, and which misleads or intimidates the other person;

threaten the institution of criminal or disciplinary proceedings against the other person if a civil liability to the solicitor's client is not satisfied; or

use tactics that go beyond legitimate advocacy, and which are primarily designed to embarrass or frustrate another person (r 34.1).

A solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of the legal services of that matter (r 37.1).

A solicitor must not in the course of practice, engage in conduct which constitutes: discrimination; sexual harassment or workplace bullying (r 42.1).

Part B – Acting in a legal aid family dispute resolution conference

Parties are encouraged to attend family dispute resolution with the aim of making a genuine effort to settle their parenting dispute (see the relevant pre-action procedures in FLR r 1.05 and schedule 1).

B1. Initial client interview

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

An admitted solicitor must conduct the initial client interview. When the lawyer first sees the client, they should:

a) Arrange a qualified interpreter, if required.

b) Where appropriate use, LAQ's *Language Services Policy*, *LAQ's Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients* and *LAQ's Best practice guidelines for working with children and young people* and its supporting *framework.*

c) Obtain full particulars of the nature of the dispute, the history of the marriage/relationship, current arrangements for the children and matrimonial property.

d) Obtain instructions about the reasons for the relationship/marriage breakdown and whether there is any domestic or family violence and if so, whether there is a protection order in place.

e) Assess the nature of any domestic or family violence. If domestic or family violence exists/ed in the relationship, conduct a risk assessment of the situation – refer to the *QLS and LAQ Domestic and Family Violence Best Practice Framework* and other *Best Practice Guidelines* published by QLS and LAQ, and the family law courts' *Family Violence Best Practice Principles.* Lawyers should also be aware of the *Queensland Government Common Risk and Safety Framework*.

f) Assess the client's safety attending and leaving the family dispute resolution conference, or the risk posed by them.

g) Consider whether the client needs any additional supports at the conference — would it be better if they had a support person or support worker with them?

h) Consider whether the matter falls within the exceptions to compulsory family dispute resolution as noted in FLA s 60I (9) and, if so, seek appropriate funding for litigation.

i) If family dispute resolution is appropriate and the matter has not been excluded, complete the *Solicitor Conference Assessment Sheet*, and return it to LAQ's Dispute Resolution Services no later than 48 hours before the start of the conference.

j) Explain the family dispute resolution conference procedure, the aim of conferencing, the role of the family dispute resolution practitioner(s) and qualifications, and the consequences of refusing an invitation to attend dispute resolution to the client.

k) Explain the solicitor's role and the client's role at the family dispute resolution conference.

l) Explain the confidentiality provisions and expected conduct of the parties at the family dispute resolution conference.

m) If relevant, request copies of any documentation relevant to the matter.

n) In-house lawyers should use the LAQ risk assessment resources *(LAQ network access required)* to assess the client's safety, or the risk posed by them. Lawyers should also be aware of the *Queensland Government Common Risk and Safety Framework*.

o) Be sympathetic to the emotions and concerns that the client may have and support the client to engage in the legal process in ways that are safe and mitigate risk.

p) Advise the client the conference format is at the conference organiser's discretion who takes into account all information. If a protection order exists, then the matter MUST commence as a shuttle conference.

If the principal dispute relates to parenting orders the lawyer should:

1. discuss a detailed proposal to be put to the other party and in doing so provide advice in relation to:
   a) FLA ss 60B, 60CA, 60CC, 61DA, 64B. The client must also be advised of consequences of an order in line with FLA ss 65DAA, 65DAC, 65DAE
   b) the obligations created by parenting orders in line with FLA ss 65M, 65N, 65NA, 65P
   c) the option of entering into a parenting plan in line with FLA s 63DA, where to get assistance in preparing a parenting plan and what matters may be dealt with in the parenting plan in line with FLA s 63C.
2. check with the client whether there are any property issues to be resolved. Also check the child support situation and whether it is an underlying issue affecting the parties' attitudes to parenting orders. If these are relevant matters, arrange a further advice session as soon as possible to discuss these matters with the client and all relevant time limitations.

If the principal dispute concerns property settlement the lawyer should:

1. Check that parenting arrangements, including child support, are satisfactory or whether these also need to be discussed at the family dispute resolution conference. If the parties are in dispute in all areas and all the issues are complex, two separate dispute resolution conferences may need to be held, one for parenting arrangements and the other to finalise property settlement issues. A further advice session may be necessary to discuss these other matters and all relevant time limitations with the client.
2. Discuss supporting document availability with the client and provide them with a list of documents to produce with the *Family Dispute Resolution Conference – Preparation Form (Property)* before the family dispute resolution conference. If the parties' own real estate, the client should obtain at least one and preferably three market appraisals in writing of any property to attach to the LAQ *Property Preparation Form* (provided by LAQ) for exchange with the other party before the family dispute resolution conference.
3. Advise the client generally about FLA ss 79(4), 75(2) and draw up a proposal.

Note:
Instituting proceedings and time limitations – FLA s 44 — a 12-month time limit applies for certain types of applications.

Note:
In all matters, the *Solicitor Conference Assessment Sheet* MUST be returned to the conference organiser no later than 48 hours before the start date for the conference. In property matters the *Family Dispute Resolution Conference – Preparation Form (Property)* must also be returned to the conference organiser with the *Solicitor Conference Assessment Sheet* no later than 48 hours before the start date for the family dispute resolution conference.

B2. Negotiation

In order to narrow or define the issues, the lawyer may write to the other party's solicitor, if known, (or the other party if he/she is not represented) with the client's proposals and concerns in accordance with the instructions given at the initial interview. In the case of property settlement, the letter should also contain a request to produce relevant documents at the family dispute resolution conference and list the client's estimate of the value of each separate item of property.

B3. Attending the family dispute resolution conference

Before a family dispute resolution conference, the lawyer should arrange for the client to attend a brief 15 to 30 minutes interview prior to the start of the conference to bring them up to date with any recent developments. This is also an opportunity to confirm the issues and concerns of the client, to reiterate the confidentiality of the conference, and to remind the client of the family dispute resolution conference procedure. If domestic or family violence is an issue, consider meeting the client at LAQ and escorting the client to the family dispute resolution conference. If the conference is at the LAQ office, consider meeting the client at another location and escorting them to the office.

During the family dispute resolution conference, the lawyer should:

- Allow the client to do most of the talking (some clients will request the lawyer's assistance and may find speaking for themselves too difficult. They should encourage the client where possible to speak for themselves and prompt them if they forget to raise any relevant issues).
- Assist where necessary to summarise the client's concerns and proposals or supply necessary details omitted by the client.
- Ask for a private meeting if the client becomes distressed or otherwise requires legal advice.
- If the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted.
- At private meetings during the family dispute resolution conference, carefully explain options and proposals discussed during the family dispute resolution conference to the client and give the appropriate legal advice in relation to those options and proposals. Also discuss the consequences of agreement or failure to reach agreement and their implications for future legal aid funding. The client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement. Reality test all proposals for agreement with the client.
- Advise the client about the use and effect of a parenting plan and/or court orders.
- If domestic or family violence is an issue in the dispute, consider how the proposed orders will work given the nature of the domestic or family violence. Will the client and children still be safe? Are the orders workable considering the nature of the domestic or family violence? Reality test this with the client. Do not advise the client to agree to something if it will place them or the child/ren in a dangerous situation or will not be workable.
- Ensure the client is aware that information given to the family dispute resolution practitioner may be given to the other party unless it is clearly explained the information is not to be disclosed.
- Ensure any agreement reached is explained to the client in detail, the client understands the practical implications of the agreement and the agreement is fully understood by the client.

Note:
Lawyers may prepare a draft proposed agreement based on their client's instructions however this draft is not to be used at the commencement of the family dispute resolution conference to limit the process. All conference parties must be given the opportunity to raise their concerns and issues and explore options for resolution. Any draft is only to be used at the end of the family dispute resolution conference to assist in preparing the written agreement incorporating the terms agreed between the parties on the day.

B4. Confirm outcome with client

If the parties reach an agreement but do not intend to file consent orders, the lawyer should write a letter to the client confirming the agreement and enclosing a typed copy of the agreement.

If an agreement was reached and consent orders are intended to be filed, the lawyer should write a letter to the client confirming this and enclosing the typed proposed consent orders and other relevant court documents – see section B5 – Consent orders.

If no agreement is reached, the lawyer should confirm this in writing with the client and provide advice to the client about their options including options for further mediation or counselling services.

B5. Consent orders

If a written agreement is reached at the family dispute resolution conference and consent orders are intended to be filed in court, aid is granted for the preparation of the orders unless advised otherwise by LAQ (this is part of the grant of aid).

A final client interview is required to check and sign the consent orders including to draft the annexure to certify the risk of domestic or family violence or child abuse and how the consent orders attempt to deal with the domestic or family violence as per FLR r 10.15A (or where applicable FCCR r 13.04A). If this is not possible, then send a final letter of advice to the client enclosing the consent orders for signature. Refer to FLR Part 10.4 or where applicable FCCR div 13.2 regarding consent orders.

Part C – Acting in parenting and property matters

C1. Letter of introduction

Prior to the initial client interview, the lawyer should forward a letter requesting an appointment be made and inhouse lawyers should enclose the instruction check list (available in Visual Files) for completion by the client prior to interview.

C2. Initial client interview

For parenting issues, the lawyer should advise the client generally concerning the relevant sections of FLA:

- s 60B — objects and principles
- ss 60CA, 60D — best interests are paramount consideration, but greater weight is given to protecting the child from physical or psychological harm from being subjected to or exposed to abuse, neglect or family violence
- ss 60CC, 61F — factors used to determine best interests
- ss 60I, 60J — requirements for attending family dispute resolution services before court proceedings are commenced (if applicable) (see Part C4. Compulsory dispute resolution)
- ss 60CH, 60CI — where a party is aware that a child or member of a child's family is under the care of a person under a child welfare law or if they are aware that the child or member of the child's family is or has been subject to a notification, investigation, inquiry or assessment that relates to abuse
- ss 61DA, 65DAA, 65DAC, 65DAE — the presumption of equal shared parental responsibility and the consequences of shared or equal shared parental responsibility orders
- s 63DA — the option of the use of parenting plans rather than court orders (see Part C3. Parenting plans)
- ss 65M–65P — the general obligations created by parenting orders
- ss 67Z, 67ZBA — where an interested person to the proceedings alleges family violence or abuse, filing of the appropriate forms.

In addition, unless the lawyer has reasonable grounds to believe the client has already been given documents containing the following information, they are required to provide information to the client relating to:

- non-court-based family services and court proceedings and services prescribed by FLA s 12B
- services available to help with a reconciliation between the parties to a marriage prescribed by FLA s 12C (note this does not have to be provided if there is no reasonable possibility of a reconciliation)
- family counselling services available to assist the parties and the child or children to adjust to the consequences of FLA Part VII orders prescribed by s 12D.

For property matters, they should advise the client generally in relation to FLA ss 72, 79(4).

They should discuss various options with the client for resolution or determination and advise on:

- mediation including family dispute resolution services offered by LAQ
- counselling
- arbitration (if property dispute)
- pre-action procedures prior to filing (FLR r 1.05, schedule 1)
- the requirements for attending family dispute resolution services should be fully discussed with the client (FLA ss 60I, 60J)

- their duty of disclosure (FLR Part 13.2, and FCCR Part 14 div 14.2)
- where domestic or family violence is present, safety and risk assessment issues including whether a protection order is needed *(use the risk assessment resources located on the LAQ intranet — LAQ network access required)*. Lawyers should be aware of the *Queensland Government Common Risk and Safety Framework*
- the making of an offer to settle (FLA s 117C, and FLR Part 10.0)
- the client's understanding of cost implications as far as legal aid is concerned and their rights and obligations under FLA and FLR (FLR ch 19)
- the appropriate court to commence proceedings in.

Consider advising the client about whether an ICL appointment is appropriate if court proceedings commence. Consider the facts of the case and whether they warrant such an order (Re K (1994) FLC 92–461, FLA ss 68L, 68LA, and FLR r 8.02). The ICL's role and responsibilities must be explained to the client and the obligations of the client must be discussed.

The lawyer should get signed instructions from the client at every significant stage of the case and retain these on the file. Instructions need to be taken to approach the other party, if this has not already occurred, to attempt to resolve the matter.

Australian Solicitors Conduct Rules relevant to advice

A solicitor must provide clear and timely advice to assist the client to understand the relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of engagement (r 7.1).

A solicitor must inform the client about the alternatives to fully contested adjudication of the case which are reasonably available to the client, unless the solicitor believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the litigation (r 7.2).

A solicitor must follow a client's lawful, proper and competent instructions (r 8.1).

C3. Parenting plans

FLA (s 63C) encourages parents to make use of parenting plans to document agreements about parenting arrangements, such as who the child will live with, the time a child is to spend with another person and allocation of parental responsibility. Parenting plans:

- must be in writing, made between the parents of a child, signed by the parents, and dated
- must be made free from any threat, duress or coercion
- are not required to be registered with the family law courts
- are not enforceable but:
    1. a parenting order is subject to a parenting plan which is entered into subsequently by the child's parents and agreed to in writing by any other person to whom the parenting order applies (other than the child)
    2. therefore, if a parenting order contravention is alleged, it will be a sufficient defence to show that the conduct was permitted under a subsequent parenting plan
    3. only in exceptional circumstances can the court order that a parenting order may only be varied by a subsequent order of the court and not a parenting plan (for example if there is a need to protect the child from harm or likely use of coercion or duress to enter into a parenting plan).

Parents will be encouraged, but not required, to obtain legal advice before entering into a parenting plan.

C4. Compulsory dispute resolution

Parties are encouraged to attend family dispute resolution with the aim of making a genuine effort to settle their parenting dispute. The current family court pre-action procedures set out in the FLR will apply and will also be extended to other courts exercising family law jurisdiction, such as the FCCA.

Some matters may not be required to have the certificate before an application is made. These are matters where:

1. the court is satisfied on reasonable grounds there has been child abuse, there is risk of such abuse, there has been domestic or family violence by one of the parties or there is a risk of such domestic or family violence
2. the application is for contravention, made within 12 months of the court order allegedly contravened, is made in relation to a particular issue and there are reasonable grounds to believe the alleged contravener show a serious disregard for their obligations under the orders.

Note: the current pre-action procedures only apply to property proceedings commenced in the family court (FLR Schedule 1 Part 1).

A party must make a reasonable and genuine attempt to settle the issues noted in the application before filing (FLR r 5.03 notes the exceptions to this).

C5. Prepare documentation – family law courts

The following should be attended to:

- *Initiating Application* (interim/procedural/ancillary/ interlocutory or incidental order) (FLR chs 2, 5 and FCCR pt 4).
- Affidavit — setting out evidence supporting the application.
- Consider whether a Notice of child abuse, family violence or risk (the Notice) must be filed and served. The Notice is a mandatory form which must be used by any person who files an Initiating Application or Response seeking parenting orders on or after 12 January 2015. The Notice sets out the allegations of abuse or risk of abuse. Check the definitions of abuse in FLA which includes being 'exposed' to family violence (s 4(1)). Also consider FLA ss 60J, 67Z, 67ZA and FLR Part 2.3.
- If a client has concerns for their safety due to domestic or family violence, consider whether an application for a protection order is appropriate and the services available to assist in supporting people who have experienced domestic or family violence.
- Alternatively, the lawyer can give consideration to applying for an injunction in the family law courts for personal protection of a child or any person the child is involved with (FLA s 68B).
- If the client already has a protection order, filing the order with the family law courts.
- Any notices under FLA ss 67Z, 67ZBA relating to child abuse or domestic or family violence.
- Remember to give the client relevant brochures (FLR r 2.03 (service of brochures) and FLA s12E ("obligations on legal practitioners").
- Consider who must be a party to the proceedings (FLR ch 6 and FCCR Part 11).

For documents to be filed refer to FLR Chapter 2 and Tables 2.1 and 2.2. For protection orders refer to FLA s 60CF and FLR r 2.05.

The lawyer should consider whether any applications need to be made to preserve property or to secure the client's position regarding children's matters and obtain instructions to collect appropriate evidence to support such application.

If the documentation is lengthy and includes an application for interim orders, the lawyer should prepare it in draft and forward it to the client for perusal with a letter requesting that they arrange a further appointment for signature and advise of any changes at that appointment.

The lawyer must give clear advice to the client about swearing the affidavit and the implications of making false or misleading statements (FLA s 118; FLR Part 15.2; and FCCR Part 15 div 15.4).

When taking instructions and preparing the client's material for parenting orders, consider the matters specified in FLA ss 60B, 60CC, and the adviser obligations in s 60D.

The lawyer should also consider whether to issue subpoenas in support of the application in a case. For the FamCA refer to FLR ch 15 generally regarding subpoenas and specifically to r 15.21 for the limitation on the number of subpoenas allowed, and Part 15.3 generally regarding subpoenas). For the FCCA refer to FCCR Part 15A div 15A.1.

C6. Costs

There is an obligation to provide a written statement of the actual costs incurred up to and including the trial to the court and to each party (FLR r 19.04(4)). This rule is not often enforced by the FamCA.

Lawyers need to be aware of the FamCA and the FCCA rules in relation to costs (FLR ch 19 and FCCR, ch 1 Part 21).

If costs are an issue in the matter, then it may be essential to strictly comply with the rules regarding costs to obtain an appropriate court order.

C7. Filing the documentation at court

When filing the application and supporting documents, include a letter to the registry requesting a waiver of fees on the basis that the client is legally aided. A copy of the LAQ letter confirming the grant of aid can be downloaded and printed via Grants Online e-lodgement.

In property proceedings, once an application is filed there are rules about what documentation must be exchanged prior to the first court date (FLR r 12.02). Also check the FCCA disclosure requirements (FCCR Part 14).

Magellan matters fall into a separate category and are discussed later in these standards.

The family law courts have published a protocol for the division of work between the FamCA and FCCA. This states that the FamCA should deal with matters involving:

- international child abduction
- international relocation
- disputes about whether a case should be heard in Australia
- special medical procedures (of the type such as gender reassignment and sterilisation)
- contravention and related applications in parenting cases relating to orders which have been made in FamCA proceedings, which have reached a final stage of hearing or a judicial determination, and which have been made within 12 months prior to filing
- serious allegations of sexual abuse of a child warranting transfer to the Magellan list or similar list where applicable, and serious allegations of physical abuse of a child or serious controlling domestic or family violence warranting the attention of a superior court
- complex questions of jurisdiction or law
- if the matter proceeds to a final hearing, it is likely it would take in excess of four days of hearing time.

Note:
The FamCA has exclusive jurisdiction in relation to the validity of marriages and divorces (FLA s 113).

Pursuant to FLA s 60G the FamCA may grant leave for proceedings to be commenced for the adoption of a child by a prescribed adopting parent (that is a parent of the child, the spouse of, or a person in a defacto relationship with a parent of the child or a parent of the child and either his or her spouse or a person in a defacto relationship with the parent).

A lawyer should be mindful a particular matter may need to be transferred up to the FamCA at some point during the course of the proceedings. Either court on its own motion or on application of a party can transfer a matter to the other court and there is no right of appeal from a decision to transfer.

C8. Write to client advising of date of hearing

Once the application is filed, a lawyer should advise the client in writing of the next court event and provide an understanding of the next step involved in the process and the need for the client's attendance. Generally, a client should attend each court event unless excused (see FLR Part 12.4). At all possible and appropriate opportunities, the client should be reminded of the benefits and availability of counselling, mediation and other primary dispute resolution methods to assist in the resolution of the dispute.

C9. Before the interim hearing date

Once the court documents have been filed, they need to be served on all parties. The FamCA, requires service of all relevant documents and brochures (FLR chs 2, 6–7). Refer to FCCR Part 6 in the FCCA.

For all urgent applications without notice in the FamCA or FCCA see FLR Part 5.3 and FCCR Part 5.

For unusual FamCA applications relating to maintenance, cross-vesting, medical procedures, child support, applications for nullity and validity of marriage or divorce/annulment and passports see FLR Part 4.2.

For unusual FCCA matters refer to general provisions for applications (FCCR Part 10 “How to conduct proceedings”, and rr 4.08–4.10).

When acting for the respondent, the same processes apply but refer to FLR ch 9 when dealing with FamCA matters. In the FCCA there is no distinction between applicants and respondents.

It is possible to adjourn a hearing administratively and this can be done by all parties writing to the court requesting the adjournment (FLR Part 12.5 and FCCR r 10.02).

Note:
Care should always be taken when writing to the court that all parties are copied into the correspondence and this is apparent on the face of the correspondence. Direct contact with a judge is not appropriate and all correspondence should be to a duty registrar, registrar, or the relevant judicial officer’s associate.

See FCCA Information Notice – Communicating with Judges Chambers

C10. Child abuse cases

Protecting a child from harm is the primary consideration in FLA s 60CC. Check the definition of abuse in FLA s 4.

The FLA requires that a party must advise the court if they are aware that a child or another member of the child's family is in care or subject to a child welfare process (s 60CH).

FLA s 67Z requires a notice in the prescribed form to be filed where an allegation of child abuse is made. In both the FamCA and the FCCA, FLR Part 2.3 provides that a Notice of child abuse, family violence or risk (the Notice) must be filed and served. The Notice is a mandatory form which must be used by any person who files an Initiating Application or Response seeking parenting orders on or after 12 January 2015. The *Notice* sets out the allegations of abuse or risk of abuse. Check the definitions of abuse in FLA which includes being 'exposed' to family violence (s 4(1)). Also consider FLA ss 60J, 67Z, 67ZA and FLR Part 2.3. FLA s 67ZBB requires that when a document is filed alleging abuse or risk of abuse of a child, the court must consider interim or procedural orders to enable the matter to be dealt with expeditiously and to protect the child and the parties.

When these matters are raised in the material, then consideration should be given to:

- the appointment of ICL (FLA s 68L, Re K (1994) FLC 92–461)
- requesting the intervention of Child Safety (FLA s 91B)
- an order for the production of documents or information from a prescribed State Authority (FLA s 69ZW)
- the need and suitability for further counselling in the matter, and
- any other appropriate interim order required.

Consider whether the matter should be referred to the Magellan Registrar for inclusion in the list of cases to be determined using the Magellan case management system in the FamCA. If the matter is in the FCCA, consider applying to transfer the matter to the FamCA if it is considered a candidate for allocation to Magellan.

C11. Domestic and family violence cases

Where there are allegations of domestic or family violence, ensure these are outlined in the client's material in detail and all available extraneous evidence is annexed to the material. Check the definition of domestic or family violence (FLA s 4AB). Remember that the definition of abuse of a child includes exposure to domestic or family violence. Ensure that the information before the court includes whether the child/ren witnessed or otherwise experienced the domestic or family violence.

When a document filed alleges domestic or family violence or risk of domestic or family violence by one party the court must consider interim or procedural orders to enable the matter to be dealt with expeditiously and to protect the parties and the children. In both the FamCA and the FCCA a Notice of child abuse, family violence or risk (the Notice) must be filed and served. The Notice sets out the allegations of domestic or family violence or risk of domestic or family violence (FLA s 67ZBB and FLR Part 2.3 apply to both the FCCA and the FamCA).

Read and be aware of the contents of the *QLS and LAQ Domestic and Family Violence Best Practice Framework for Legal and Non-Legal Practitioners* and other *Best Practice Guidelines* published by QLS and LAQ, and the family law courts' *Family Violence Best Practice Principles.* All lawyers should be aware of the *Queensland Government Common Risk and Safety Framework*.

Some important considerations are:

- Use best endeavours to ensure that the parenting orders made in the family law courts are consistent with any state domestic and family violence order.

- Consider whether a safety plan is required with the courts for the client's attendance at court events. Consider whether the client needs:
    - to give evidence via video link
    - to be escorted by security to and from the court
    - a safety room while waiting to go into the court.
- The family law courts' *Family Violence Best Practice Principles* include reference to a 'PPP' screening tool which they describe as a useful framework of factors to look for when considering the risk of domestic or family violence.
- Consider whether the client's address should be suppressed, or other protective measures should be taken to protect their identity and location.
- Consider whether an expert in domestic or family violence should be called to give evidence.
- Consider whether the client should be referred to a domestic and family violence prevention service for support through the court process.
- Do a risk assessment — use the LAQ risk assessment resources (available to inhouse lawyers only) or the family law courts' *Family Violence Best Practice Principles*. Also refer to the *Queensland Government Common Risk and Safety Framework*. What is the severity of the violence? What means does the person using violence have to carry out their threats?
- The lawyer should consider their own safety and take precautions.

The family law courts' *Family Violence Best Practice Principles* outline some important considerations for a court both at the interim and final hearing stage. It is important that these considerations are addressed both in the client's material and in submissions to the court.

C12. Evatt List – The Lighthouse Project (Pilot – Brisbane Registry)

The Lighthouse Project systematically screens new 'parenting only' matters for family safety risks on filing a parenting application in Adelaide, Brisbane and Parramatta registries and provides litigants with safety planning and service referral.
Matters filed after the commencement date in Adelaide, Brisbane and Parramatta will be eligible for inclusion in the pilot. The Lighthouse Project involves:

- Early risk screening where parties will be asked to complete a questionnaire via a secure online platform known as *Family DOORS Triage*. Developed specifically for the Courts, this can be completed safely and conveniently from any device including a PC, mobile or tablet. Responses are confidential and are only used for risk screening and referral to health support, and to identify suitable case management to improve the safety and wellbeing for children and families. Early identification and management of safety concerns.
- Assessment and triage of cases by a specialised team, who will provide resources and safe and suitable case management.
- Referring high-risk cases to a dedicated court list known as the Evatt list.

In order to be referred to the Evatt list, at least one of the parties to the proceedings must:
- complete an online risk screen questionnaire called Family DOORS Triage; and
- return a "high risk" Family DOORS triage assessment.

Practitioners acting for a party should encourage their client to complete the voluntary online risk screen questionnaire. There is no capacity to be referred to the pilot at a later stage if the party does not complete the questionnaire.

The aim of the Evatt list is to have a case finalised within 9-12 months of initial filing. Before the first court event, the Registrar will review the case to confirm it is appropriate for the Evatt List. The Registrar may make a FLA s 11F order and gather any information the court might need to make a decision, for example, documents from the Police, other courts or Child Safety.

On the first court event, the Judge or senior registrar will address any urgent issues and decide what evidence and information needs to be gathered to get the case ready for a trial.

On the second court event, a plan will be made for the trial and directions made to get the case ready for trial. Consideration will be given to a specialised report being ordered or family dispute resolution if it is appropriate.

The ICL's role description is not different in these proceedings but they may be required to undertake additional investigations.

An Evatt's list final hearing is no different to a traditional trial because the issues in dispute will most likely require a thorough forensic investigation into the allegations, the police and Child Safety's subsequent investigations if any and other matters.

C13. Hearing of interim issues

The client must attend court unless there are special circumstances, and these must be set out in an affidavit to be provided to court. Attendance can be by electronic means (FLR r 5.06, FCCA s 67).

Where there is domestic and family violence and/or child abuse, it is essential that all material and information is placed before the court at this early stage and that submissions include reference to this evidence.

In the FCCA, in particular, interim proceedings are almost always conducted within huge duty lists where large numbers of cases seek a hearing.

When preparing a matter for interim hearing, the case of Goode & Goode (2006) FLC 93–286 must be considered when preparing submissions.

Lawyers should also remember the first and fundamental duty that they owe is to the court and the administration of justice, and that there are a number of steps that can be undertaken to assist the court to identify the issues and competing proposals of the parties. These steps can be summarised as follows:

- clear and precise identification of the nature of the proceedings
- their basis in statute and decided authority. Lawyers must consider matters in FLA Part VII, especially ss 60B, 60CA, 60CC, 60CF-CI
- concise accurate and cogent reference to agreed or uncontentious facts and less contentious matters
- always providing proposed orders that reflect the evidence and the inherent restrictions following the process in Goode & Goode. The proposed orders must be drafted in line with the client's instructions and using the FLA's required terminology
- ensuring there is an evidentiary foundation to support the proposed orders
- that matters referred to above be addressed in a document that is concise, in dot point form and confined to one or two pages
- that in the time spent waiting for hearing lawyers identify what is agreed and what remains uncontroversial to clearly identify what issues need to be determined in the necessary confined interim hearing
- a lawyer's primary duty to the court and the administration of justice includes assisting the judge by helping to identify and crystallise issues, evidence and the like when a party is self-represented. That is not a duty exclusively confined to the ICL. On the day of the hearing, ensure attendance at the callover (if applicable). At the callover, or if asked by the associate, a general overview of the matter is given and an estimate of the time the matter will need to be heard.

At the commencement of the hearing, the court will need to be advised of the material the client intends to rely to support their application. As outlined above submissions are made to the court setting out why the orders sought should be made and should refer to the relevant evidence, legislative and case law authority supporting those submissions.

At the conclusion of the interim hearing, either court may make directions for a final hearing and a lawyer should be ready to discuss the length of trial, the number of witnesses and the nature of the evidence to be

called to establish a client's case and generally the terms of any directions needed to progress a matter to final hearing.

Following the interim hearing, advise the client in writing of the hearing outcome and their rights and obligations as a result of the orders made by the court. Consider and provide advice in relation to any possible review or appeal of the decision. The lawyer must also provide the client with a sealed copy of any orders made in due course.

Inform the client of the next court event and whether they need to attend. Review the case plan for the matter with the client.

Lawyers need to be aware in some cases the court can order that a family consultant interview the parties and prepare a report in line with FLA s 62G. FLA s 11F gives a court the power to order the parties to attend appointments with the family consultant and, if a person fails to do so, to report the failure to the court which may then make further orders as appropriate in the circumstances.

The court can adjourn the interim hearing for the family consultant to prepare the report and give evidence relating to the report. Family consultants are present in the court room and may give, on oath, evidence of their observations of the parties regardless of whether or not they have had any prior involvement in the matter. In some circumstances, the judicial officer may invite the parties to cross-examine the family consultant on their observations, but many do not. The lawyer should be prepared for this.

Australian Solicitors Conduct Rules relevant to mentions and interim hearings

A solicitor representing a client in a matter that is before the court must not act as the mere mouthpiece of the client or of the instructing solicitor (if any) and must exercise the forensic judgements called for during the case independently and after consideration of the client's instructions where applicable (r 17.1 and see exception in r 17.2).

A solicitor must not make submissions or express views to a court on any material evidence or issue in the case in terms which convey or appear to convey the solicitor's personal opinion on the merits of that evidence or issue (r 17.3).

A solicitor must not, in the presence of any of the parties or solicitors, deal with a court on terms of informal personal familiarity which may reasonably give the appearance that the solicitor has special favour with the court (r 18.1).

A solicitor seeking any interlocutory relief in an ex parte application must disclose to the court all factual or legal matters which are within their knowledge and are not protected by privilege and that the solicitor has reasonable grounds to believe would support an argument against granting relief or limiting its terms adversely to the client (r 19.4).

A solicitor must, at the appropriate time in the hearing of a case if the court has not yet been informed of that matter, inform the court of any binding authority, where there is no binding authority, any authority decided by an Australian appellate court and any applicable legislation known to the solicitor and which the solicitor has reasonable grounds to believe to be directly on point, against the client's case (rr 19.6, 19.8).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

A solicitor must not, outside an ex parte application or a hearing of which an opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless the court has first communicated with the solicitor…or the opponent has consented beforehand…a solicitor must promptly tell the opponent what passes between the solicitor and a court in a communication… (rr 22.5–22.6).

A solicitor must take steps to inform the opponent as soon as possible after the solicitor has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, of that fact and the grounds of the application, and must try, with the opponent's consent, to inform the court of that application promptly (r 22.8).

C14. Prior to each further court event

Prior to each court event the lawyer should:

1. obtain an appropriate grant of aid to attend
2. consider the possibility of settlement prior to the court event and the filing of consent orders
3. advise the client about costs (FLR r 19.21)
4. obtain all relevant documentation to be exchanged from the client (FLR Part 12.2, FCCR Part 14)
5. consider any necessary adjournment (see FLR Part 12.5).

C15. Procedural hearing/mention

At the procedural hearing, the lawyer must fully advise the court of all matters relevant to the procedural orders needed in the matter, details of agreed issues, assessing prospects of settlement and negotiating resolution of the matter, and identify all matters relevant to fulfilling the main purpose of FLR. This is appropriate practice in both courts (FLR r 12.04, FCCR r 10.01). The lawyer must also assist the court in determining the next appropriate court event.

Directions may be made by either court for a final hearing and a lawyer should be ready to discuss the length of trial, the number of witnesses and the nature of the evidence to be called to establish a client's case and generally the terms of any directions needed to progress a matter to final hearing. Consider:

- is the matter ready for trial? Do other things need to occur or is time needed to have steps undertaken or progress made for the matter eg counselling, completion of course, valuations, reports etc
- the number of witnesses needed and why their evidence is relevant
- whether FLA s102NA applies and if a banning order is required, if either party is unrepresented or is likely to be unrepresented at the trial
- the length of trial — include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions
- whether expert witnesses and a conference of experts are needed (if appropriate)
- whether a family report is needed (if appropriate)
- whether a proposed family report writer is appropriately experienced and qualified as per the *Australian Standards of Practice for Family Assessments and Reporting*
- speaking to proposed counsel and confirming availability (if possible).

The determination of directions to prepare a matter for trial provides a further opportunity for settlement negotiations. The lawyer must ensure that there is a grant of aid to attend this court event. Directions will be given for the preparation of the matter for trial (FLR Chapters 12 and 16, FCCR Part 10).

Immediately after the court event, when directions for trial are made, seek aid for trial material preparation and any other court event attendance prior to the final hearing. The lawyer should assess the evidence needed to assist the court in determining the issues in dispute, keeping in mind the legislative framework that applies. Consider how to adduce that evidence before the court in line with the rules of evidence (as far as they apply).

C16. Magellan cases

The FamCA has a separate case management system for matters involving allegations of child sexual abuse and serious physical abuse. If such matters commence in the FCCA, consider transferring them to the FamCA as soon as possible (FLA s 45, FCCA s 39).

If a judicial officer or the parties identify a matter and the judicial officer agrees it is suitable for inclusion in the list of matters to be designated Magellan, it is referred to the Magellan Registrar for consideration. If the parties consider the matter is suitable for inclusion but are still waiting for a further court date, they may write to the court seeking the matter be referred to the Magellan Registrar for consideration.

If the Magellan Registrar designates the matter as appropriate for inclusion, the matter is listed as soon as possible before a judge.

On the first return date the judge will normally hear any interim application or list a matter on the next available date to determine interim issues and consider making matter preparation directions for the final hearing. As the matter is under the judge's control, there may be more than one directions, hearing or interim hearing, depending upon the judge's directions for the involvement of a family consultant, expert reports, subpoenas, the filing of further material or other matters.

The ICL's role description is not different in these proceedings but they may be required to undertake additional investigations. Child Safety have a protocol for the Magellan reports to provide a summary of Child

Safety's involvement with the family. The court may issue a request for the provision of this report or for documentation or information in line with FLA s 69ZW.

A Magellan matter's final hearing is no different to a traditional trial because the issues in dispute will most likely require a thorough forensic investigation into the abuse allegations, the police and Child Safety's subsequent investigations if any and other matters.

C17. Matters to be considered prior to conciliation conferences — property matters

In property matters, the lawyer should ensure all required documentation is exchanged seven days prior to the conciliation conference (see FLR r 12.05 and the 'conciliation conference document').

In the FCCA, the court will make orders/directions for the preparation of the matter for a conciliation conference. (FCCR r 10.05).

Both courts provide extensive directions and requirements for the preparation, disclosure and exchange of information. These directions must be complied with and fully explained to the client.

C18. Conciliation conferences

The client is required to attend. Send the client a letter advising the conciliation conference date, confirming their attendance is required and to set up a preparation meeting prior to the conciliation conference date (FLR r 12.11, FCCR r 10.05(3)).

The lawyer should also consider all options for settlement with the client and make a genuine effort to reach agreement about relevant issues (FLR r 12.07, FCCR r 10.05). Try to agree on the size of the asset pool at the conciliation conference, failing agreement seek directions about obtaining valuations of the relevant assets of the parties.

Always consider the filing of an offer. In the FamCA the rules require an offer be made within 28 days after the conciliation conference or such further time as ordered (FLR r 10.06).

C19. Property proceedings—trial directions

If the disputed issues only relate to property settlement, then trial directions are issued by the registrar/judge when the matter is listed for directions or a mention following the conciliation conference. The lawyer must confirm the issues in dispute, identify the asset pool, identify agreed values or seek directions for the appointment of a single expert to provide valuations evidence and list the witnesses intended to be called to give evidence. Trial preparation directions will be determined.

C20. Preparation for trial

Once trial directions are made, the lawyer must request aid on behalf of the client to comply. The client must be informed of the request for aid result.

When preparing for trial, the lawyer should:

1. ensure updated grant/s of aid are available
2. inform the client in writing of the trial dates, confirming their need to attend along with their witnesses, and steps taken to prepare for trial
3. explain the need to comply with trial directions and possible consequences of failure to comply
4. file the material to be relied upon at trial, in line with trial directions
5. confirm counsel for the trial in writing, setting out trial dates and fees payable in line with LAQ's *Scale of Fees*
6. issue subpoenas together with conduct monies

7. consider whether FLA s102NA applies and if a banning order is required, if either party is unrepresented or is likely to be unrepresented at the trial.
8. inform witnesses of trial dates and ensure they have a copy of their affidavits or evidence, their availability for giving evidence and arrange times for their attendance for cross examination to minimise waiting time
9. give notice of witnesses required for cross-examination
10. arrange qualified interpreters, as required
11. give notice for admission of facts or tendering of documents by consent (remember for some documents to be accepted the lawyer may need to arrange for someone to be able to identify the document. These matters should be fully discussed well prior to trial to allow for appropriate subpoenas to be issued if necessary)
12. tender notices to admit facts or documents and notices to dispute same (see FLR Part 11.2, FCCR div 15.5)
13. liaise with the other parties/their legal representatives for the preparation and filing of material in line with court directions (eg a *Case information form* in the FamCA and FCCA *Case Outline*)
14. file the *Summary of argument* or *Case outline* in accordance with court directions (FLR Part 16.2).

If there is any reason to believe a matter is not ready to proceed to trial, the matter should be brought to the court's attention as soon as possible.

If a matter has settled, this should also be brought to the court's attention as soon as possible.

Any material to be relied upon at trial *must* be filed in compliance with court's directions. When preparing the material, consider the matters referred to in FLA Part VII in relation to parenting arrangements, and in FLA ss 72, 79(4) for property proceedings.

Consider whether the orders sought in the application/response are consistent with the lawyer's instructions. Do they need to file an amended application?

Affidavits should be prepared in line with the guidance noted in FCCR Part 15, div 15.4 and FLR Part 15.2.

Subpoenas should be prepared in line with FCCR Part 15A, and FLR Part 15.3.

In the FamCA, the directions hearing will generally be followed by a case management hearing, compliance hearing and then trial.

Once the court documents have been filed, they need to be served on all parties (FLR Chapter 7, FCCR Part 6).

C21. Brief counsel for trial

The lawyer should retain and brief counsel as soon as practicable. The brief to counsel must include all relevant filed court documentation, including proposed trial plan; copies of any subpoenaed material available properly indexed (or summary if necessary, although attempt to obtain leave to copy subpoena material if the matter is progressing to a trial); copies of relevant diary notes, correspondence and other documentation and if appropriate a *Summary of argument/Case outline* for settling.

"Instructions to counsel" in the brief should set out the trial dates and court in which the proceedings are listed for hearing, the basic outline of the case to be determined, list the witnesses to be called by each party and a statement as to the relevance of that evidence, and confirmation of fees payable pursuant to Legal Aid *Scale of Fees*. All briefs to counsel are marked "Legal Aid Brief". Where appropriate, a pro-forma invoice is to be forwarded to counsel with the brief.

If there are any particular issues in the case that should be brought to counsel's attention, they should be clearly spelt out in counsel's instructions (eg previously agreed facts).

If counsel has agreed to settle a draft *Summary of argument/Case outline* pursuant to the grant of aid to prepare for trial, then the brief must be given well in advance.

Any counsel briefed in a legal aid matter accepts the brief on the basis that they will be paid at legal aid rates which are set out in the LAQ *Scale of Fees* unless otherwise provided. The lawyer should ensure that only barristers of suitable experience in the particular jurisdiction are to be briefed and only barristers who are members of the Bar Association of Queensland are briefed

If there is a requirement to brief interstate counsel, they will also be paid in accordance with the *LAQ Scale of Fees unless otherwise provided.* Where LAQ directs the briefing of particular counsel, try to brief that particular counsel.

C22. Conference with counsel

The lawyer should arrange a conference with counsel and the client as early as practicable prior to the first day of trial.

If the trial is part heard, a further conference with counsel and the client should be arranged prior to the first day of the resumed trial.

C23. Attend at the trial and instruct counsel

A lawyer should ensure all required witnesses are available for giving evidence and arrange times for their attendance for cross examination purposes and to minimise waiting time.

The lawyer should take accurate records of the proceedings including witness names, a sufficient summary of the evidence given, and directions or orders made by the court during the course of the hearing. A 'List of exhibits' should also be maintained throughout the trial.

It is recommended that during the course of the trial an adequate summary of questions and answers should be maintained by the instructing solicitor. As an instructing solicitor, a lawyer should be taking careful note of the evidence to assist counsel with their cross-examination and submissions. A full file note should be kept on the file confirming what occurs on each day of the trial. Handwritten notes from the trial should be placed on the file.

At the conclusion of the trial the lawyer must write to the client informing them of the outcome and provide sealed copies of orders made or advise the expected judgment date if known. The client should also be informed of their obligations under the orders and their right of appeal. The lawyer should also comply with Part A.7 - Completion of matter.

Australian Solicitors Conduct Rules relevant to trials

A solicitor must alert the opponent and if necessary inform the court if any express concession made in the course of a trial in civil proceedings by the opponent about evidence, case-law or legislation is to the knowledge of the solicitor contrary to the true position and is believed by the solicitor to have been made by mistake (r 19.12).

A solicitor who, as a result of information provided by the client or a witness called on behalf of the client, learns during a hearing or after judgment or the decision is reserved and while it remains pending, that the client or a witness called on behalf of the client has…lied…falsified a document…suppressed …material evidence upon a topic where there is a positive duty to make a disclosure…must advise the client that the court should be informed of the lie, falsification or suppression and request authority so to inform the court; and refuse to take any further part in the case unless the client authorises the solicitor to inform the court of the lie, falsification or suppression and must promptly inform the court of the lie, falsification or suppression upon the client authorising the solicitor to do so but otherwise may not inform the court of the lie, falsification or suppression (r 20.1).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

…in proceedings in which an allegation of sexual assault, indecent assault or the commission of an act of indecency is made and in which the alleged victim gives evidence, a solicitor must not ask that witness a question or pursue a line of questioning of that witness which is intended to mislead or confuse the witness or ...be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive and …must take into account any particular vulnerability of the witness in the manner and tone of the questions that the solicitor asks (r 21.8).

A solicitor whose client informs the solicitor that the client intends to disobey a court's order must: advise the client against that course and warn the client of its dangers; not advise the client how to carry out or conceal that course; and not inform the court or the opponent of the client's intention unless: the client has authorised the solicitor to do so beforehand; or the solicitor believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety (r 20.3).

A solicitor must not take any step to prevent or discourage a prospective witness or a witness from conferring with an opponent or being interviewed by or on behalf of any other person involved in proceedings (r 23).

A solicitor must not advise or suggest to a witness that false or misleading evidence should be given nor condone another person doing so; or coach a witness by advising what answers the witness should give to questions which might be asked (r 24).

A solicitor must not confer with more than one lay witness (including a party or client) at the same time about any issue which there are reasonable grounds for the solicitor to believe may be contentious at a hearing and where (it) would affect evidence to be given by any of those witnesses unless ...(there are) reasonable grounds (r 25).

A solicitor must not confer with any witness (including a party or client) called by the solicitor on any matter related to the proceedings while that witness remains under cross-examination (with some "special circumstance" exceptions) (r 26).

In a case in which it is known, or becomes apparent, that a solicitor will be required to give evidence material to the determination of contested issues before the court, the solicitor may not appear as advocate for the client in the hearing (r 27.1).

A solicitor must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or the administration of justice (r 28).

C24. Appeals

After the court delivers the final judgment, write to the client informing them of the orders made and the reasons for judgment, supplying copies of both sets of documents if available.

Consider the appropriateness or otherwise of an appeal and inform the client of their options in relation to appeals (see FLA Part X, FLR ch 22, FCCA s 20).

If appropriate, an appeal should be discussed with the client and all-time limits must be observed. If an appeal is considered appropriate:

1. Take instructions from the client.
2. Seek relevant grants of aid to appeal (prior to applying for aid in-house lawyers should consult with their Principal Lawyer and the Family Law and Civil Justice Services director about the case for a preliminary view on the prospects of an appeal).
3. Provided legal aid funding is available to the client, the lawyer must assist the client to complete and lodge the *Notice of Appeal*.

The lawyer should consider whether a stay of any of the orders should be requested pending further consideration of the matter.

Usually, a directions hearing is set for before a regional appeal registrar to make directions for the preparation of the appeal books, including the transcript, and to have the matter prepared for a hearing.

Appeal books can be very large. They are prepared by the appellant and the court will dictate how many books need to be filed. Usually there are two sets for each party and one set for each appeal judge.

The directions are checked for compliance by the appeal registrar and ultimately the matter is listed before either a single appeal judge or the Full Court of the FamCA. Grants of aid need to be arranged for the client, whether they are the appellant or the respondent.

Grants are available for counsel to appear on the appeal and counsel needs to be briefed with all relevant material, but most importantly a complete set of appeal books. Counsel must be made aware of the court's directions as they will include the date for the filing of counsel's *Outline of Argument*.

Lawyers are required to instruct counsel at the hearing of the appeal. It is best that the same lawyer and counsel who conducted the trial appear on the appeal wherever possible.

After the appeal is concluded write to the client informing them of the outcome and provide sealed copies of any orders made or advise the expected judgment date if known. Once the judgment is received, write to the client informing them of the outcome. The client should also be informed of their obligations under the orders and their right of any further appeal.

The lawyer should ensure all accounts are finalised in a timely manner at the conclusion of the matter.

Lawyers should notify LAQ of the outcome after each grant of aid completion and when submitting their final account for payment and file finalisation. In-house staff will not be able to finalise a file unless a report has been submitted to LAQ Grants on the outcome of each grant of aid.

In-house lawyers should refer to the *File management standards – litigation support officers* to be aware of their responsibilities in closing a file.

C25. Delays in delivery of judgment

There is a protocol to be followed when asking the court for advice about the anticipated delivery of a judgment, in circumstances where a judgment has been outstanding for at least 3 months and the circumstances regarding the delay are unexplained. Further information can be found on the QLS website

If a judgment has been outstanding for a period of 6 months, and the circumstances regarding the delay are unexplained, this should be brought to the Family Law and Civil Justice Services director's attention.

Part D – Acting in arbitration matters

Once the arbitration grants officer receives a legal assistance application and the matter fits within the parameters of the arbitration service, they will forward a letter of invitation to the other party inviting them to participate in the arbitration service.

Once both parties' consent is received, the firm/lawyer will be given a PA1 grant of aid and will be sent an arbitration pack.

D1. Letter of introduction

After a grant of legal aid has been issued, the lawyer must send a letter to the client asking them to make an appointment and enclose the instruction check list for the client to complete prior to interview (the instruction check list will be supplied by the arbitration service).

The letter should include in details of supporting documentation required for the arbitration process.

D2. Initial interview with client

For property matters, the lawyer must advise the client about FLA ss 10L–10P, 13E–13K, 72, 75(2), 79(4), 90SE, 90SM.

The lawyer should check with the client to ensure all parenting matters have been resolved.

They should discuss various options for resolution or determination with the client and advise to the client about:

- mediation including LAQ's family dispute resolution services
- counselling
- arbitration (if property dispute)
- pre-action procedures (see FLR r 1.05 and Schedule 1**)** (Note these procedures must be complied with prior to the filing of any application in a court. Some matters may be exempt from compliance)
- family dispute resolution service attendance requirement should be fully discussed with the client (FLA ss 60I, 60J)
- the duty of disclosure (FLR ch 13, and FCCR Part 14, div 14.2)
- potentially making an offer to settle (FLA s 117C, and FLR Part 10.01)
- confirm the client's understanding of cost implications as far as legal aid is concerned and their rights and obligations under FLA and FLR ch 19.

> **Note:**
> The current FamCA pre-action procedures set out in FLR should continue to apply to property proceedings whenever commenced in the FamCA. The pre-action procedures have not been extended to property proceedings commenced in the FCCA

The lawyer should consider any applications that may need to be made to preserve property, to secure the client's position regarding property matters and obtain instructions to collect appropriate evidence to support such application.

The lawyer must complete and explain to the client:

- the client agreement to arbitrate,
- notice to pay costs, and

- retrospective contribution forms.

These must be returned to the arbitration grants officer within two [2] weeks.

The lawyer must complete the *Arbitration statement* with the client, providing supporting documents such as valuations of property or chattels, SIF statements from superannuation funds, bank statements, pay slips, mortgage documents etc. (the arbitration may not proceed without supporting documentation). All sections must be completed.

The *Arbitration statement* must be returned to the arbitration grants officer within 28 calendar days of the arbitration pack issue date.

The lawyer should send the client a letter attaching a copy of their *Arbitration statement* and supporting material and outlining the next step in the process, including the need to make a further appointment once the other party's *Arbitration statement* is received and the need to prepare a response document.

Australian Solicitors Conduct Rules relevant to advice

A solicitor must provide clear and timely advice to assist the client to understand the relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of engagement (r 7.1).

A solicitor must inform the client about the alternatives to fully contested adjudication of the case which are reasonably available to the client, unless the solicitor believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the matter (r 7.2).

A solicitor must follow a client's lawful, proper and competent instructions (r 8).

D3. After the initial interview and following completion of the Arbitration statement

The arbitration grants officer will copy both parties' *Arbitration statements* and supporting material and provide a copy of each to the other party's lawyer, as part of the discovery process.

Once the *Arbitration statements* with supporting documentation have been exchanged, each party must complete an *Arbitration response* within 14 calendar days.

The lawyer must review the *Arbitration statements* with their client and prepare an *Arbitration response,* with the necessary supporting documents.

The lawyer must also explain to the client their ability or election to make oral submissions by telephone.

Both the *Arbitration response* and the election as to oral submissions are required within 14 calendar days of the *Arbitration response* issuing to the firm.

The lawyer must make extension of time requests to comply with these time limits in writing, addressed to the arbitration grants officer and sent to the other party's solicitor.

The arbitration grants officer will send copies of approved extension of time requests to both parties.

The arbitration grants officer must be notified in writing if parties are negotiating a possible settlement prior to arbitration.

If legal aid is required for a property valuation or medical report, make these requests in writing and forward a copy to the arbitration grants officer. They will copy the *Arbitration response* documents with supporting material prepared by both parties and exchange these as part of the discovery process. The arbitration grants officer forwards a copy of all arbitration material to the arbitrator.

The arbitrator has 14 calendar days from receipt of all material to make requests for further information. This request is sent to the arbitration grants officer who forwards it to both parties through their solicitors.

If the arbitrator requests further information or materials make another appointment with the client to clarify those matters where further information (if required) and provide this information to the arbitrator.

The lawyer must provide a response and supporting documents within seven calendar days of request.

A copy of each party's response to the arbitrators request for further information will be provided to the other party and to the arbitrator.

If the parties' chose to make oral submissions the arbitrator will provide possible dates for this to occur. The arbitration grants officer will notify both parties' solicitors in writing of these dates. Both parties' solicitors are expected to liaise to determine the most convenient date to nominate and to send a joint letter to the arbitration grants officer advising the nominated date and the contact telephone numbers to be used for the oral submissions.

The arbitrator will separately contact each lawyer to confirm the date, time, telephone number and process for submissions.

Submissions will be collected over the telephone, via a conference call initiated by the arbitrator on the jointly agreed date and time, with each party having a 30 minutes time limit.

The arbitrator will issue an award within 14 calendar days of the oral submissions, except in cases where the arbitrator has requested further material from a party/the parties during the submissions. In such a circumstance the arbitrator arranges a time to produce the further information during the oral submissions. The arbitrator will then issue the award 14 calendar days after that time.

D4. Final Interview with client

Once the client's award is received the lawyer must write to the client informing them of the outcome, provide a copy of the arbitral award and explain the terms to the client. It may be necessary to make an appointment with the client to explain the award terms.

Inform the client of their award obligations and issues relating to the 'slip rule'. Inform the client of the process of attaching the arbitral award to an *Application for Consent Orders* to be filed in a court. Inform the client of the likely implications of refusing to sign consent orders attaching the arbitral award.

If superannuation forms part of the award and a splitting order is included, you must provide 28 days' notice to the superannuation trustee of the proposed order. This must be done before the consent orders can be lodged to avoid any requisition.

The lawyer should ensure all accounts are finalised in a timely manner by submitting any accounts as soon as practicable to the arbitration grants officer.

If a grant of aid for conveyancing is required, the lawyer must notify the arbitration grants officer immediately in writing and send a copy of this request to the other party.

Once the final account has been paid legal aid will issue a retrospective invoice to the client and a copy to the solicitor.

Please be aware any monies from settlement must be held in a trust account until legal aid is paid. Once the client's debt with legal aid is settled the money can be released to the client. If money is released before the client's legal aid debt is paid, the firm will be responsible for the debt.

Lawyers must not communicate directly with the arbitrator.

The lawyer must provide the arbitration grants officer with a copy of any correspondence sent between parties in relation to property matters.

Part E – Acting as a family law duty lawyer

E1. Family law duty lawyer service

LAQ's family law duty lawyer service is a court-based service offering free legal information, advice, minor assistance, and in limited circumstances representation, to self-represented persons who are a party to proceedings before the family law courts about a family law matter.

The family law duty lawyer service is provided by LAQ in-house lawyers. Partner agencies provide conflict services. Where a partner agency is not available to assist a client, a preferred supplier may be engaged.

The duty lawyer service is available in the Brisbane, Rockhampton, Cairns and Townsville permanent registries of the family law courts and on some sitting dates at court circuit locations in remote and rural Queensland.

The duty lawyer service is not able to appear as agent for preferred suppliers.

E2. The client

The family lawyer duty lawyer service is for unrepresented parties who are to appear in the family law courts that day.

If the client has a current grant of aid with a legal practitioner (apart from only a grant of aid for a conference) or is currently engaging a private practitioner, then the client can't be seen by a duty lawyer.

There is no means test for clients accessing the service. However, where it is clear that the client has significant financial resources then limited advice and a referral to a private lawyer may be given.

E3. The duty lawyer

Duty lawyers must complete any family law duty lawyer training as required by Legal Aid Queensland. They must observe at least one session with a family law duty lawyer and then be observed by a family law duty lawyer for at least one session before working independently.

The duty lawyer should, ideally, spend no more than 70 minutes with each client.

If there are no clients to assist as duty lawyer, the maximum time that can be charged to LAQ is 60 minutes.

Family law lawyers should be aware of the requirements outlined in Part A1 - Initial interview and Part A3 – Management of matters.

The family law duty lawyer should also be aware of the court support worker services available for providing on-site support regarding safety and information about men's behaviour change programs and how to refer clients to them.

E4. Arrival/departure time & breaks

Rostered duty lawyers must be available between the core hours of 9.00am and 4.30pm and should arrive to commence the service at 9.00am.

Duty lawyers may return to the office prior to 4.30pm where they have completed assisting their clients and all other FLDL and FASS clients have been allocated to a duty lawyer/FASS Lawyer and those lawyers do not require assistance. Duty Lawyers may be required to return to court if new clients attend the service or if the other duty lawyer/FASS Lawyer require assistance. Duty lawyers should not stay at Court past 5.00pm and then only with the prior approval of their Principal Lawyer

Duty lawyers must ensure they take breaks throughout the day, including a lunch break of a minimum of 30 minutes.

E5. Security

Duty lawyers should familiarise themselves with the location and use of the duress button in the family law duty lawyer rooms they are using. For court circuit locations, the duty lawyer should consider the use of a mobile duress button.

Clients should not be left alone in the FLDL interview rooms without a duty lawyer present to ensure security and confidentiality of systems and documents. The client should be asked to wait outside the room / take a break when the duty lawyer is not present.

If the client has concerns about their safety while present at court, the duty lawyer (or intake officer or support worker instructed by the duty lawyer) should speak to security and where possible arrange a private room for the client or alternatively a seating location where security will be monitoring them.

For face to face interviews, if the duty lawyer has security concerns about a client may:

- choose to interview the client outside the interview room (eg in a quiet spot on the court floor in the line of sight of security) rather than in an interview room, or
- ask the client to leave bags outside the interview room, and/or
- interview with the door open.

If during the course of assistance, the client's behaviour becomes inappropriate, the duty lawyer may terminate the interview and ask the client to leave. In-house staff should complete an incident report as required.

If a client makes threats to harm themselves or another person, the duty lawyer providing the advice shall immediately report the threat to their supervisor and in-house staff should complete an incident report.

E6. Intake

In Brisbane and Townsville, the intake process will be completed by the intake officer who will be at Court to hand out and process completed forms.

In other locations the duty lawyer is to provide the *Family law duty lawyer form* to anyone wanting to see the duty lawyer. Once the completed form is received back it should be checked to ensure all relevant parts have been completed and the client has signed the form. The duty lawyer will then need to arrange a conflict check, usually by calling their designated litigation support officer and providing the details of the client, other party, and children. If there is no conflict, then the duty lawyer will assist the client as soon as practicable. If it is a conflict then the client is to be referred to the conflict partner agency if available, or a preferred supplier.

When the matter is referred to a preferred supplier because the partner agency is not available:

- A completed “conflict letter” is provided to the preferred supplier. This letter includes the current amount under the LAQ scale of fees for providing legal advice.
- The *Family law duty lawyer form* is not provided to the preferred supplier and is retained by LAQ.

Duty lawyers will prioritise the order of assisting clients based on factors including: LAQ priorities, sitting type, court time, the other party is privately represented and therefore incurring legal costs, and availability of an on-site interpreter.

E7. Interpreters

If an interpreter has been arranged by the court, then they should accompany the client for their duty lawyer advice. Interpreters engaged by the court are usually booked for a specific time period and onsite intake officers/lawyers should ask for this information from the interpreter or court associate at the outset so as to assist with prioritising assistance.

An interpreter can be arranged by phoning the Translating and Interpreting Service on 131 450 and quoting the legal aid code C483831.

If an on-site or phone interpreter has not been arranged by the court for the court event, and an interpreter is required, the duty lawyer should make this request to the court officer and/or judicial officer. If the court is

unable to arrange an interpreter for the court event then the duty lawyer should consider appearing for the client in court to explain the situation to the Judge, request an interpreter be arranged for the next court event, and request that the matter be adjourned. Following a court appearance, the duty lawyer must arrange for a telephone interpreter so the duty lawyer can explain the court outcome to the client.

E8. Client service

The duty lawyer is to:

- introduce themselves, and explain the purpose of the interview and their role
- explain confidentiality of assistance
- use active listening skills to build rapport with the client
- explain the law related to the client's problems and client's options in language which is clear and avoids legal jargon
- check that the client understands their options
- provide referrals to appropriate support services for the client.

Where a client wishes to have a support person present, the duty lawyer should agree to this request unless it is inappropriate eg conflict of interest, confidentiality, witness in proceedings.

If the client does not have a copy of relevant court documents, the duty lawyer shall ask the court officer to be able inspect the court file in the back of the court room.

Children are not be permitted to be present during the client interview. An exception may be made for children under 12 months of age. Appropriate alternative arrangements should be considered, including: the child being cared for by the other party if safe to do so; the child being cared for by another family member or friend who is present; contacting a family member or friend to attend court to care for the child while the client is being interviewed / appearing in court. The child is not permitted to be cared for by the intake officer or other employee of LAQ.

E9. Instructions and advice

When the duty lawyer is first given the *Family law duty lawyer form* it is recommended that they do the following:

- Check on page 1 of the form to see if the client has any special circumstances (eg interpreter required).
- Check the 'personal safety' section on page 2 of the form and whether the matter is FASS (two or more yes boxes ticked), if it is then the enhanced FASS model should be followed (while encouraged, duty lawyer clients are not required to complete the personal safety questions).
- Check if the other party is present at court or appearing by phone (as may be relevant to client safety).

Duty lawyers must complete the solicitor section of the *Family law duty lawyer form* and record the client's instructions and their advice to the client. Client instructions will depend on their matter but should include (if not already noted elsewhere on the form or attached to the form):

- The relevant facts relayed by the client.
- The advice provided.
- The relationship of any person other than the client who was present (eg friend).
- Details of any proposals exchanged with the other party.
- Details of any unusual occurrence eg client appearing to be intoxicated, client complaint.
- relevant time limits (eg applicable time limits for property settlement for married and defacto couples).

- Interpreter job reference number.
- If appeared in court, the outcome of the court appearance, including next return date (if any).
- Details of any referrals given (eg Queensland Public Trustee free will making service.)
- Details of any discussions with third parties (eg child safety officer).
- Any limits to the advice (eg a just and equitable property settlement amount).
- The approximate time spent on the interview, including time spent making phone calls, researching issues, perusing and/or drafting documents and completing the duty lawyer form.
- Details of instructions to make adverse disclosure (eg drug use).

The following documents should accompany the form:

- Signed minutes of agreement that the duty lawyer has prepared or advised on (interim or final).
- Signed client instructions giving their consent to make adverse disclosures to the other party.
- Any other document prepared by the duty lawyer for the client (eg minute of orders sought).

The duty lawyer completing the form/session report should provide sufficient information for others to readily understand. Handwritten records must be legible.

E10. Parameters of service

Under this service the duty lawyer may (subject to their discretion) do the following:

- Advice and information about court event that day.
- Negotiating with the other party (see heading below).
- Drafting of simple documents related to the court event (eg. Affidavit of Service, minute of orders sought etc).
- Possible representation in court for vulnerable clients on less complex court matters (see heading below). For example:
    - adjournment applications.
    - short or procedural mentions.
    - applications for the appointment of an ICL or preparation of a family report.
    - urgent recovery applications or airport watchlist applications.
- Advice about actions to take after court date to enhance case (eg subpoena, supporting affidavits or application in a case etc).
- Making appropriate referrals, (eg. community support services, Public Trustee will making service etc).
- Assist with making an application for legal aid (including complete checklist if appropriate).
- Assist with a Notice of Address for Service (mark “confidential address” on the first address line on the form where concerns about safety).

If the other party is legally represented or there is an ICL is involved, then they should be asked to draft orders for the agreement.

The duty lawyer should not accept or effect service at court on behalf of a client.

Where the client has unrelated legal issues that are not the subject of the court proceedings, then the duty lawyer shall make referrals for advice following the court event.

Negotiations

It is expected that duty lawyers will negotiate on behalf of clients unless it would not be appropriate. Examples where it may be inappropriate include: the client is not following advice; the client does not give instructions to negotiate.

Negotiations may assist the client and/or the court to progress the matter by, for example: identifying or narrowing the issues in dispute; assist in giving advice to the client about what to expect will happen in court; avoid surprises for the client such as oral applications; and / or agreeing on a course for the progress and management of the case or issues in dispute. Negotiations may also lead to the parties reaching an agreement on an interim or final basis.

If the other party is self-represented, the duty lawyer should advise them of the duty lawyer service and how to access the service before entering into negotiations.

While the client is assisted by the duty lawyer, any negotiations by the other party, and/or their legal representative should be with the duty lawyer. This should be communicated to the other party / their lawyer at the outset of discussions.

Duty lawyers should also consider matters relating to ongoing case management, such as whether a family dispute resolution conference, private mediation, conciliation conference, child inclusive memorandum, family report, psychiatric report or independent children's lawyer would be appropriate in the circumstances. The duty lawyer should seek instructions from the client and propose these to the other parties if relevant.

Duty lawyers are not to become involved in lengthy/complex negotiations. Where matters require additional time, the duty lawyer should consider the most efficient use of resources (for example, referral to mediation or appearing in court to seek direction about case management of outstanding contested issues or to narrow the issues).

Representation

The duty lawyer can represent clients in court at their discretion. The duty lawyer must have regard to LAQ priorities in determining the level of assistance to be provided to the client.

LAQ priorities of assistance include: risk of homelessness, disability, literacy, language barrier or cultural issue, and geographical location.

Priority should be given to assisting the most vulnerable clients.

Appearances for vulnerable clients should be considered where the client would be unable to adequately represent themselves.

When appearing:

- A court appearance slip must be completed and in the name of firm field state: "duty lawyer (LAQ)."
- Announce your appearance as 'NAME, solicitor of Legal Aid Queensland, I appear as duty lawyer assisting the PARTY TYPE eg applicant mother.' inform the court of any limitations on the level of representation at the outset of the appearance (e.g. to seek an adjournment, and if unsuccessful, then seek leave to withdraw).
- The details of court orders/directions and next court date should be provided to the client in writing (this could include, for example, by providing a copy of the consent orders signed by the parties).

The "do nots"

The duty lawyer should not do any of the following:

- Complete full sets of court documents or complex documents.
- Represent in contravention applications, enforcement hearings, trial directions hearings, conciliations conferences and final hearings.
- Draft final property orders or binding financial agreements.
- Draft child support agreements.
- Witness documents not prepared by the service.

- View subpoena records.
- Any cross examination.
- Any ongoing involvement in the case, including receiving correspondence.
- Effecting or receiving service of documents.
- Acting as an agent for any other parties.
- Disclose the address of the client without prior instructions.
- Sign consent orders (even if drafted by the service).
- Engross orders.

E11. Appeals

If the duty lawyer considers an appeal should be made, the duty lawyer should discuss this with the client and provide advice about time limits and procedures for an appeal. This advice must be recorded on the *family law duty lawyer form*.

E12. Administrative requirements

The duty lawyer must complete any necessary administrative work within three working days of seeing the client. This includes:

- Completing the *Family law duty lawyer form* and providing it to the litigation support officer for data entry.
- In-house litigation support officers are to complete data entry in accordance with LAQ's *Family Law Services data entry manual for duty lawyer services*.
- Arranging for legal aid application forms to be lodged or checklists to be completed.
- Attending to any follow-up work and referrals.

All time spent on family law duty lawyer related matters (including unproductive time waiting at court for clients) is to be time recorded in Visual Files under the "family duty lawyer" category.

E13. Applications for legal aid

The duty lawyer should assess if it would be appropriate for the client to apply for legal aid, if they have not already done so and they appear to be financially eligible for legal aid.

The duty lawyer shall inform the client if they are likely or not to be eligible for a grant of legal aid and only provide the client with a legal aid application form where the duty lawyer considers the client is likely to be eligible. Where assessed as eligible for a grant of aid, the lawyer shall record sufficient information to support an application for legal aid and complete a grants checklist if applicable. If the client has been informed, they are not likely to be eligible for legal aid and still request a copy of a legal aid application form, then the duty lawyer/intake officer may provide the form.

Where an intake officer is available the duty lawyer can refer the client to the intake officer for them to assist with the completion of a legal aid application form and copying supporting documents.

If an intake officer is not available then the duty lawyer should assist the client with completing the application form if possible, otherwise the client should be referred to the closest legal aid office for assistance with the form if required.

If in-house duty lawyers are assisting clients with legal aid applications then they should be aware of LAQ's best practice for accepting LAQ application forms (LAQ intranet access required).

The duty lawyer is not required to accept in-complete legal aid applications from clients. Yellow Stickers can be placed on the front of the form so that when the client returns the form to LAQ Records and Information Management know to provide the form to the in-house lawyer for e-lodging.

In-house duty lawyers should also consider what assistance they may provide in the following circumstances:

- A client has a pending legal aid application – including, for example, contacting the grants officer to identify if there are any outstanding documents, providing a copy of any new documents (eg a family report), making a submission in support of a grant of aid, and completing a grants checklist.
- A client has been refused legal aid – including, for example, assisting with on-forwarding a letter of appeal written by the client, a submission in support of a grant of aid where the duty lawyer considers their client may be meritorious. The grants officer can overturn their own decision and therefore may need not refer the matter to a review officer) or providing any outstanding documents (eg proof of income).
- If the client has been refused legal aid and this decision has been upheld by the review officer – a duty lawyer may request the review officer reconsider the decision if new evidence has arisen that supports the client receiving a grant of aid (eg family report). This request is sent to LAQ Grants section.
- A LAQ family dispute resolution conference is underway - providing a completed Client assessment sheet (intake form) to the conference organiser.

E14. Managing conflict

Duty lawyer services can give rise to a conflict which may prevent other teams of LAQ from providing case work assistance in future. To reduce the costs to the organisation arising from this conflict, in-house duty lawyers (or their team) are encouraged to take on clients they have assisted at duty lawyer once a grant of legal aid is approved.

Part EA – Family Advocacy and Support Services - matters in court that day (enhanced family law duty lawyer model)

EA1. Family Advocacy and Support Services – matter in court that day

The family advocacy and support services (FASS) are available in Brisbane, Townsville and Cairns registries of the Federal Circuit Court and Family Court. FASS enhances the existing FLDL model.

Self-represented clients in court that day who have been impacted by domestic or family violence are eligible for FASS. The domestic or family violence does not have to be current and the client does not need to be the person who experienced the violence.

Domestic and family violence may be clear from the intake form (currently if the client has ticked 2 or more "yes" boxes in the 'personal safety' section), or from discussions the lawyer has had with the client. Intake workers and duty lawyers are expected to be able to appropriately screen and identify domestic or family violence.

Where a matter is FASS it should be indicated on the *Family law duty lawyer and family advocacy and support services form* in the relevant sections.

FASS lawyers should be aware of the requirements outlined in Part A1 - Initial interview and Part A3 – Management of matters.

FASS lawyers should also be aware of the court support worker services available for providing on-site support regarding safety and information about men's behaviour change programs and how to refer clients to them.

EA2. "Personal safety" section of form

Before seeing a client, the 'personal safety' section of the form should be viewed. This can be used to assist in decision making as to how to proceed with the client.

For example, with question 1, if the client is worried about their personal safety while at court and has not made prior arrangements with the court for a safety plan, then security should be alerted so they can develop a safety plan appropriate to the client's needs. This could include arranging a private room for the client (if available) or alternatively a seating location where security will be monitoring them, and/or exiting the building through a safe entrance.

Other information identified in the personal safety section should also be analyzed to help in assisting the client.

If the client has indicated that they 'would like information about applying for or varying a domestic and family violence protection order' then the client should be a referred to the FASS support worker for assistance with this.

If the personal safety section has not been filled out (it is not mandatory for clients who are in court that day), but from your discussions it becomes apparent that the client has been impacted by family violence then the duty lawyer is to indicate this on the form and tick the FASS 'Yes' box. The enhanced FASS duty lawyer model should then be followed.

EA3. How FASS differs from the standard FLDL service

Most of the information provided in Part E is still relevant when seeing clients as part of the FASS service. As such FASS duty lawyers should be familiar with these and should follow them for FASS clients who are in court that day.

However, under this model there are three main differences when comparing it to the standard family law duty lawyer service.

1. The service parameters enable clients impacted by domestic or family violence to have access to a greater level of assistance related to the court appearance that day.
2. These clients are able to be referred to the see the FASS support worker.
3. FASS clients in court that day are given priority over other duty lawyer clients who do not identify as vulnerable clients.

EA4. Parameters of service

Under this service the FASS lawyer may (subject to their discretion) do the following in addition to the service provided by duty lawyers at Part E10 above:

On the day of court

- Working with the FASS support worker, including in relation to advocating for delivery of non-legal services where appropriate.
- Representation in court on the day of court may be possible in urgent matters for:
    - Simple contested interim hearings (where client is vulnerable, and preparation is possible) in relation to matters such as:
        - children, including relocations due to family violence
        - property injunctions or other urgent matters
        - forced marriage matters.

Only in exceptional circumstances in urgent matters

- Drafting interim property orders.
- Drafting any other property orders for example injunctions; Witnessing documents not prepared by the service (if appropriate and necessary to the court event that day).
- Representation in any matter including enforcement hearings, complex interim hearings or other contested hearings.
- Viewing subpoena records (only when urgent as highly relevant for the court appearance that day, the documents to inspect are limited, and leave is granted due to special circumstances of the client).
- Any cross examination (apart from limited questions to a FLA s11F report writer).
- Acting as an agent for any other parties.
- Any ongoing involvement in the case, including sending or receiving correspondence related to that court event.
- Effecting or receiving service of documents.

Duty lawyers should seek approval from their supervisor or principal lawyer prior to participating in the above listed activities under ‘in exceptional circumstances’.

In comparison to the standard family law duty lawyer service parameters, there are a few things to note about this enhanced service:

- Negotiations would be undertaken in most matters, where appropriate.

- Representation would occur in most circumstances where the client is impacted by family violence and the matter is urgent.
- Greater assistance with document drafting, if required.
- More focus on what needs to happen after the matter has been in court and some case planning with the client, particularly about getting evidence before the court about family violence or risks of harm to the client or child/ren.

EA5. Referrals to the support worker

If the client meets the criteria of FASS (impacted by domestic or family violence), the client is also able to receive assistance from the legal aid support worker, if appropriate. Depending on the client's needs it may be that the support worker is seen prior to, together with or after the client has seen, the FASS duty lawyer. Any referrals to the support worker should be done with the client's understanding and consent.

If the matter is likely to be called in to court soon and the client does not need to see the support worker before the court appearance, then the client can be given the option to see the support worker after their matter is finished in court.

Referrals to the support worker are to be made by photocopying the first 2 pages of the *Family law duty lawyer and family advocacy and support service duty lawyer form* and writing on the front of the photocopy or on an attached sticky note the main issue that the client is being referred for assistance.

The photocopied form can then be provided directly to the support worker or can be placed in their in tray if they are currently seeing another client. If the support worker is not present at court, then the duty lawyer is to ask the intake officer to phone the support worker to request that they return to the court to see the client.

Assistance available from the support worker can include:

- Risk assessment.
- Safety planning.
- Crisis intervention.
- Crisis counselling in relation to issues presenting that day.
- Liaise with Court security to ensure clients safety while at court and when exiting building.
- Assistance with completing urgent applications for DVPO's and variations to existing DVPO's (or refer to Magistrates Court).
- Assessment of client's social support needs.
- Advocacy on behalf of clients with stakeholder organisations such as: police, refuges, victim support services, personal counselling services, drug and alcohol services, behaviour change programs, Family Relationship Centres (FRCs), financial counselling services, housing and tenancy services, Aboriginal and Torres Strait Islander support services, migration support services.
- Assistance to transition between, and manage matters across, the Commonwealth family law, state/territory family violence and state/territory child protection jurisdictions.
- Assistance with completing Legal Aid application forms.

EA6. Administrative requirements and managing conflict

Refer to Parts E12 – Administrative requirements and E14 – Managing conflict.

All time spent on FASS related matters (including unproductive time waiting at court for clients) is to be time recorded in Visual Files under the "family duty lawyer" category.

Part EB – Family Advocacy and Support Services - matters not in court (minor assistance model)

FASS can assist clients if they do not have a court event in the family law courts on the day. Assistance may only be provided if a client has a very urgent family law issue that they require assistance with AND they have been impacted by domestic or family violence. This service is for urgent matters such as those requiring immediate action to: protect a child or person from harm or risk of harm; prevent a child from being wrongfully removed from Australia or, prevent one spouse from dealing with property to the detriment of the client.

The service is available in Brisbane, Townsville and Cairns areas only.

The service is not available to provide assistance to persons who reside outside these areas (usual referral pathways for urgent matters apply).

The service is not to take the place of grants of aid. It is to fill the gap between the client needing urgent legal action to be taken and when the client can get a grant of legal aid, or an appointment with a community legal centre or a private practitioner.

FASS lawyers should be aware of the requirements outlined in Part A1 - Initial interview and Part A3 – Management of matters

FASS lawyers should also be aware of the court support worker services available for providing on-site support regarding safety and information about men's behaviour change programs and how to refer clients to them.

EB1. Referrals to the service

Clients are referred to the service by the Court. Subject to capacity, clients may also be referred by LAQ (mainly front counter and the call centre), community legal centres or domestic and family violence services.

Generally, for client's already receiving assistance from an in-house family law practitioner / or team on the same or a related matter should continue to be assisted by them (for example, to secure a grant of aid for their urgent family law issue or minor assistance). Only where aid can't be secured is the client to be referred to FASS. Priority is given to the originating lawyer/team to provide the FASS assistance once intake is completed. This is to ensure these vulnerable clients have one point of contact and are not lost during the referral process.

EB2. The client

The client will have a very urgent legal issue, such as those listed on the Urgency Guide.

The client will also have been impacted by family violence in some way. FASS provides assistance to both the victim and perpetrator of violence.

There is no means test for clients to attend at the service.

Clients must not have another lawyer currently assisting them with the matter.

EB3. Intake

The client will initially be assessed against the FASS criteria (very urgent legal issue AND impacted by family violence) and if appropriate they will then complete the intake form.

The intake form will be completed with the intake officer (Brisbane) or front counter staff (Townsville and Cairns). Once processed and if there is no conflict, then the form will be provided to the FASS lawyer. The allocated FASS lawyer should be the first option for such matters, however if they do not have capacity then

other family law duty lawyers may be asked to assist the client. If a conflict exists, the client will be referred to the conflict service available, or a preferred supplier.

Clients returning to FASS to finalise assistance (see Part EB6) are to complete one *family advocacy and support services form* on their initial day of presenting. The intake officer shall use a photocopy of the first two pages of the completed form and insert the new date.

EB4. Location

In Brisbane, clients are referred by the court to the family law duty lawyer intake room. In Townsville and Cairns these clients would usually referred by the court to the Legal Aid office front counter.

EB5. Parameters of Service

The FASS lawyer is able to assist the client with the urgent legal issue they are presenting with. The FASS lawyer is able to provide information and advice, draft correspondence, draft simple court documentation and assist with legal aid applications.

Under this service the FASS lawyer may (subject to their discretion and where appropriate) do any of the following:

Not in court that day (urgent matters only)

- Advice and information about legal situation.
- Preparation of brief correspondence (eg for return of child).
- Drafting of limited court documents.
- Screening for, referrals to and coordination of family dispute resolution conference appointments.
- Making referrals, (eg community support services, Public Trustee will-making service etc). Advocating on behalf of clients with other stakeholders (eg advocacy with police for a police application for a domestic and family violence protection order).
- Working with the FASS support worker, including in relation to advocating for delivery of non-legal services.
- Assist with making an application for Legal Aid (including complete checklist if appropriate), appealing a refusal of aid, or securing a grant of aid if the decision is pending.

Possible drafting of court documents

- Drafting initiating court documents for:
    - Urgent recovery order.
    - Urgent airport watch list / pace alert.
    - Urgent interim children's application (where risk of harm etc).
    - Urgent spousal maintenance.
    - Urgent interim property orders (eg injunctions etc).
    - Urgent protection order (or referral to FASS support worker or DV service).
- Drafting response documents to:
    - Urgently listed interim children or property applications, where legal aid unable to be obtained prior to the return date, an adjournment is unlikely to be granted due to urgency, and there is a potential risk/detriment/unfavourable outcome to client (eg risk of homelessness) if no response is filed.
- Drafting Form 4 – Notice of Risk and brief supporting Affidavit for any children proceedings.

- Drafting subpoena for any children proceedings (especially for obtaining evidence about family violence).
- Assistance with completing court questionnaires.

Drafting court documents

FASS lawyers are to use their individual discretion about what level of assistance is required for the client that day. It will not be necessary to draft court documents for every FASS client with an urgent legal issue.

Where appropriate, consideration should be given to trying to get the client an urgent grant of legal aid, so they can have a lawyer allocated to them to assist them with the drafting of the necessary documents. It is also preferable for these vulnerable clients to have one lawyer assisting them to avoid the need to keep repeating their story.

Other circumstances where it may be preferable to refer the client or apply for legal aid may include:

- the matter is complex (eg complex legal issues, complex factual issues, the client has special needs, there is need for a litigation guardian) and it is appropriate to seek a grant of legal aid
- the client is a young person and would benefit from assistance and advocacy on child protection matters from the children and young person team
- the client is a grandparent/senior and would benefit from specialist assistance and supports given by Caxton CLC seniors legal service
- while there is urgency, there is no immediate risk (for example, the child has been spending extended unsupervised time with the other parent previously by agreement). In those circumstances, the appropriate assistance may be issuing a return of child letter and assisting the client with a legal aid application
- the client has the financial resources to engage private representation
- the client is not following legal advice, including as to disclosure of relevant matters; and / or
- the client has not returned to the FASS service to finalise their matter as arranged, and on the day that the client does return, the circumstances are such that the demand on the service requires priority to be given to other urgent FASS matter/s.

Where the FASS lawyer assesses court documents need to be drafted then FASS precedent documents are available for this purpose. If the intake officer is available, then the lawyer can ask them to perform administrative tasks to assist with having the documents completed.

It is not intended for the documents drafted as part of this service to be detailed and lengthy. They should deal with the urgent issue at hand. Affidavits should be kept to a minimum, focusing on the most important considerations for the urgent orders sought.

It may be time efficient to have some documents (apart from the Affidavit and orders sought) written by hand by the FASS lawyer, intake officer, or even the client.

Down the bottom of the front page of the court documents in the “prepared by” section the FASS lawyer can write “FASS - LAQ” or “Family Advocacy and Support Services - LAQ”. No law firm should be noted and the address for service should be that of the client.

Copies of any main court documents prepared by the service should be attached to the *family advocacy and support services form.*

EB6. Clients returning to FASS the next day

Where possible all attempts should be made to have any assistance to be given to the client, happen on the first day the client attends. However, if this is not possible, for example where the client does not have the required documents or information, the client can only stay at court for a short period of time, or the client attends late in the day and there simply isn’t enough time to provide the assistance required, then the client can be referred back to FASS the next day to have the assistance finalised. This of course is optional for the

client. If they can't attend again, then as much information as possible should be provided, so that the client can proceed with the matter on their own or with another service.

If the client is to return the next day then the FASS lawyer who has seen the client has two options:

1. If the FASS lawyer has personal availability to see the client the next day, then they can arrange for the client to return to see them to have the documents completed. If there are no available rooms at court, then arrangements may be made for the client to attend at the legal aid office if a room booking is available.
2. If the FASS lawyer does not have personal availability to see the client the next day, then they can arrange for a handover of the matter to the FASS lawyer and support worker rostered on the next day. This can be done by emailing the intake officer and rostered lawyer and support worker to advise of this. Information should be provided in the handover email about what work has been completed and what is outstanding. Any draft documents that have been prepared by the lawyer should be attached. A photocopy of the first 2 pages of the intake form should also be provided. The intake officer / FASS lawyer will insert the new date on the photocopy, and the FASS lawyer will complete the solicitor section in relation to the assistance provided by them.

In this situation, to make the process easier for the client and the second lawyer and support worker involved, careful thought should be given early on as to what assistance is initially given to the client within the time frame available. In some situations, it may be best to provide some initial advice only and advise the client of the type of information they need to bring the next day to complete the documents with a lawyer. If the client has gone in to detail about their whole story it may be appropriate to give priority to preparing the affidavit and leaving the remainder of court documents (such as drafting the orders in the application) for the next lawyer to complete. The FASS lawyer should prioritise assistance which avoids (as much as possible) the client having to retell their story to someone new the next day.

Unless there are exceptional circumstances clients should not be seen at the service on more than two days for the same issue.

Clients are to complete one *family advocacy and support services form* on their initial day of presenting. Each subsequent FASS lawyer can use a photocopy of the first two pages of the form which can be attached to a new form where the date will be amended, and the solicitor section will be completed.

Referrals can also be made for the client to see the FASS support worker if appropriate.

EB7. Instructions and advice

Refer to Part E9

EB8. Referrals to the support worker

Refer to Part EA5

EB9. Applications for legal aid

Refer to Part E13

EB10. Administrative requirements and managing conflict

Refer to Parts E12 and E14.

All time spent on FASS related matters (including unproductive time waiting at court for clients) is to be time recorded in Visual Files under the "family duty lawyer" category.

Part F - Acting as an ICL

F1. Role/obligations

The *Guidelines for Independent Children's Lawyers (2013)* provide ICLs with guidance to fulfil their role. The family law courts have endorsed these guidelines. All ICLs must read these documents and be familiar with them as they indicate what is expected of the ICL during the course of the matter.

The ICL must also be familiar with the interface between Child Safety and the family law courts. Detailed information about the interface is located in the *Child Safety Practice Manual*.

The court appoints an ICL to independently represent the interests of a child. The ICL's paramount responsibility is to act in the best interests of each child they represent. This responsibility carries with it a duty to act impartially, to present direct evidence to the court about the child and the relevant issues, the child's views and matters relevant to the child's welfare and to make submissions taking into account all the evidence before the court.

The ICL's obligations are to:

1. form an independent view, based on the evidence, of what is in the best interests of the child
2. act in the best interests of the child in the proceedings
3. make a submission to the court suggesting it adopt a course of action, if the ICL is satisfied the course of action is in the best interests of the child
4. act impartially
5. ensure any views expressed by a child are fully put before the court
6. analyse any report or document used in the proceedings to identify matters that are the most significant for determining what is in the best interests of the child and draw these matters to the court's attention
7. endeavour to minimise the trauma to the child/ren associated with the proceedings
8. facilitate an agreed resolution when it is in the best interests of the child.

FLA states the ICL is not the child's legal representative and is not obliged to act on the child's instructions.

An ICL is not obliged to disclose to the court and cannot be required to disclose to the court any information the child communicates to them. They may however disclose any information communicated by the child if they consider the disclosure to be in the best interests of the child. Such a disclosure can be made even if it against the wishes of the child (FLA s 68LA).

In-house ICLs must use the extensive precedent package that has been developed, which includes letters, forms and documents relating to ICL work.

Given FLA's priority to protect a child from harm, the ICL must be familiar with the family law courts' *Family Violence Best Practice Principles*, and the *QLS and LAQ Domestic and Family Violence Framework for legal and non-legal practitioners* and other *Best Practice Guidelines* published by QLS and LAQ. Lawyers should also be aware of the *Queensland Government Common Risk and Safety Framework*.

Lawyers acting as ICLs must be aware of and comply with LAQ's *Best practice guidelines for working with children and young people* and its supporting *framework*.

The ICL needs to be mindful of matters involving people from culturally and linguistically diverse backgrounds or where religion is a key consideration and place appropriate evidence before the court.

ICLs should be aware of the principles outlined in LAQ's *Best Practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients.*

ICLs representing First Nations children should liaise with the FamCA's Aboriginal and Torres Strait Islander family consultants or another relevant agency, if available. FLA requires the court to consider the child's need to maintain 'a connection to culture' in its determination, therefore evidence of these connections to culture needs to be put before the court.

ICLs should apply particular sensitivity when dealing with children with physical, intellectual, mental or emotional disabilities. ICLs should liaise with the children's treating specialists as part of their investigations.

Funding for an ICL will be managed in accordance with the *LAQ Grants Handbook's Guidelines – Commonwealth – Family*

Resources for ICLs can be found on the National Legal Aid website and on LAQ's website

For information about the Evatt List—see *Guide for an Independent Children's Lawyer in the Federal Circuit Court Evatt List*

For information about working with Contact Centres – see A guideline for Family Law Courts and Childrens Contact Services

F2. Notice of Address for Service and other notices

As soon as the file is received, the ICL must:

1. File and serve a *Notice of Address for Service* (Form 8) (FLR r 8.02, FCCR r 6.01).
2. Inform the parties and their solicitors of the ICL's appointment via letter providing them with a copy of brochures to explain the ICL's role and the family report process, requesting they complete a questionnaire and sign relevant authorities to obtain information in relation to the family.
3. Notify parties of funding under LAQ Act s 28 and requirements for financial contributions noted in the *LAQ Grants Handbook's Guidelines – Commonwealth – Family - Guideline 3 - Independent representation of children.*

F3. Letter directly to the represented litigant

Apart from an initial letter of introduction, all correspondence should be sent to a party's legal representative. The initial letter to the party needs to explain the ICL's role, enclose the necessary explanatory brochures, and inform them all further communication must be through their legal representative.

If a party commences an action representing themselves and then engages a lawyer, it will be important to explain to the party that all further communication will need to be through their legal representative.

F4. Communication with a self-represented litigant

Use the same form of communication with an unrepresented party as you would with another lawyer. Take particular care to accurately record the details of any conversations with the unrepresented party. An ICL should consider sending a letter to the party confirming the details of the conversation.

ICLs should use plain English when communicating with unrepresented parties at all times.

ICLs must refer to the *QLS and LawRight Self-represented litigants: Guidelines for solicitors*. Also see *QLS Guidance Statement No. 9 – Dealing with self-represented Litigants.*

ICLs must avoid creating the impression of bias and must remain independent, objective and focused on promoting the best interests of the children.

Other parties involved in the proceedings should be advised of, and if communication is in writing included in, any direct communications with a self-represented litigant.

If the unrepresented party seeks guidance in relation to the court proceedings, the ICL should refer the unrepresented party for independent legal advice.

F5. Letter to Child Dispute Resolution Services

Send a letter to the family consultant informing them of the ICL's appointment. The letter must request the family consultant to contact the ICL to provide a preliminary overview of the dynamics of the family relationships and their impact on the children, details of other agencies involved with the family, case management recommendations, any further counselling/therapy recommendations, and child abuse notifications details.

The ICL must be familiar with the FLA provisions concerning the family consultant's role (FLA Part III).

F6. Letter to Child Safety

If a file indicates Child Safety has been involved in the matter and a FLA s 91B order is made Child Safety must be notified of the ICL appointment.

Issue a subpoena or request an order be made under FLA s 69ZW to obtain all the relevant documents from Child Safety unless one of these processes has already occurred. Inspect all returned documents before issuing a subpoena.

F7. Subpoenas

The ICL should refer to FLR Part 15.3, and FCCR Part 15A, div 15.A.1 regarding subpoenas.

In the FCCA, all parties including ICLs must not issue more than five subpoenas in a proceeding without leave of the court (refer to FCCR r 15A.05).

F8. Meeting the children

It is expected the ICL will meet with the child/ren, where appropriate.

Consider the appropriateness of this meeting in relation to how, when, where and with whom it will be conducted, the age and maturity of the child; the need for the child to be informed of the ICL's role; the court process; how the court will be informed of the child's views and the information the ICL may need to obtain about the child.

The ICL cannot offer the child a confidential relationship in the sense of a traditional client/solicitor relationship. The child needs to be made aware of the basis of the relationship; in particular the child should be advised their views will be shared with the court though neither the court nor the ICL is bound by them (FLA s 68LA (4)).

The ICL needs to consider the child's emotional, cognitive and intellectual development levels, systems abuse issues and the need to explain court determinations to the child.

The ICL has a responsibility to not become a witness in the proceedings and must take care to make appropriate arrangements when meeting with children. It is recommended the family consultant, the family report writer or other professional already involved with the children arrange the ICL and child/ren's meeting. It is not the ICL's role to take instructions from the child or to present evidence of the child's views from the bar table. Evidence of the child's views must be put before the court in an appropriate manner (FLA s 68LA).

The details of the meeting with the children — noting time, date, place and who was present, must be retained on the file.

F9. Attending court events

The ICL must personally attend all court events for the matter in accordance with the grants of aid, unless the court event is adjourned on the papers with the consent of all parties, or another ICL is briefed to appear.

Before each court event the ICL should:

1. obtain an appropriate grant of aid to attend
2. consider whether the resolution of issues between the parties is possible prior to the court event
3. ensure the parties' have been served with any updating material
4. consider all of the evidence before the court and have a position that is able to be communicated to the other parties.

It is expected that practitioners will manage their diaries to avoid conflicting court commitments.

If the ICL cannot physically attend a court event because the court is in a remote area or they have other court commitments, the ICL must, at least seven (7) working days prior to the court event, make arrangements to seek leave to appear at the court event by telephone or other electronic means. (FLR r 5.06, FCCR r 25.11).

If leave to appear at a court event by telephone or other electronic means is not granted or not possible, the ICL must, at least three working days prior to the court event engage an appropriately qualified agent who must also be on the LAQ Independent Children's Lawyer Panel.

Any agency requests to an in-house lawyer must be made in writing to the relevant lawyer or team and must contain details of all parties and children (including dates of birth), involved in the proceedings so that a conflict check can be conducted. Instructions must not be sent to an in-house lawyer until the agency request has been accepted.

F10. Dealing with criticism of the ICL

An ICL may be the subject of criticism by another party. This may develop into abuse or harassment. The ICL should make clear and accurate records of any telephone conversations, limit contact with the relevant party, require all communications to be in writing and confirm the details of any verbal contact in writing.

If there are fears for personal safety, the ICL has the same legal rights and remedies as any other citizen. LAQ should be made aware of any concerns and intended actions.

If a letter of complaint is received regarding an in-house ICL, this should be immediately referred to the Family Law and Civil Justice Services director.

If LAQ receives a complaint regarding an ICL it will seek comment or a response from the ICL about the issues raised, investigate the complaint and respond to the party and the ICL in an appropriate manner.

F11. Right of the child to direct representation

A child of sufficient maturity may wish to have direct representation or to speak directly with the court.

The ICL should, in appropriate cases, inform the child of the possibility of this and the processes needed for it to occur (for evidence from children refer to FLA ss 69ZV, 100B and FLR Part 15.1; and for case/litigation guardians refer to FLR Part 6.3 and FCCR Part 11).

In house staff should honour LAQ's *Service promise to children and young people*

F12. Conference/negotiations with other parties

The ICL must talk to the parties' solicitors as soon as possible after receiving the file to determine in an informal way what other sources of information may be useful to follow up, and whether further issues have arisen since the court ordered ICL appointment was made. This may assist in providing the lawyer with early insight into the attitude of the parties and their solicitors.

At some stage of the proceedings, and during the evidence gathering phase of preparation for a hearing to determine interim issues or a trial, the ICL should consider the appropriateness of negotiations with the parties and/or their legal representatives. A LAQ family dispute resolution conference may be appropriate and should be considered at any time during the course of the proceedings. The purpose of the negotiations or conference should be to reach a resolution of the dispute — whether in part or whole.

All communications with a party or their legal representative must be recorded accurately, and legible notes kept on the file.

During negotiations ICLs must avoid creating the impression of bias and must remain independent, objective and focused on promoting the best interests of the children.

F13. Contacting other witnesses

In gathering evidence, the ICL should consider obtaining information and/or reports from medical practitioners, teachers, counsellors and other professionals having contact with the child/ren. This should include details of their role, the information required and how the information is intended to be used. An authority from the parties is normally required.

It should be noted there is no confidentiality in the discussions with the ICL and they must make the witnesses aware of this. However, the ICL should also consider the benefit of preserving the parties' confidential therapeutic relationship with their health professionals versus the relevance and importance of putting all pieces of evidence before the court.

F14. Case management

The ICL is allowed to do anything permitted of a party in line with FLR; the ICL must comply with FLR and do anything required by FLR as if they were a party. The ICL must also be familiar with FCCR and maintain compliance with those rules.

A case plan should be developed, where appropriate with the family report writer or family consultant's assistance and be regularly reviewed by the ICL during the course of the proceedings.

Information obtained by the ICL should be placed before the court in an appropriate manner. Release of the information should be considered in light of the effect its release may have on the parties and the safety of the children. This issue may need to be brought before the court for determination.

As a party the ICL has positive obligations to inform the court (in the appropriate way) if they:

- are aware a child, or another member of the child's family is under the care of a person under a child welfare law (FLA s 60CH)
- are aware a child, or another member of the child's family has been the subject of a notification, report, investigation, inquiry or assessment by a child welfare authority that relates to abuse (FLA s 60CI)
- allege as a relevant consideration that there has been domestic or family violence or risk of domestic or family violence by one of the parties to the proceedings (s 67ZBA)

All documents filed must be served (see FLR r 7.04 and FCCR ch 1 Part 2, Part 6).

When entering into negotiations, the ICL must keep in mind that any agreement with their consent must be in the best interests of the children. If the parties reach an agreement which they believe is not in the best interests of the children, then they must not agree to the arrangement and the matter must be referred to the court for its consideration. The ICL must bring to the court's attention all those matters which caused them to form the view they could not agree to the arrangement (refer to *T and N* (2003) FLC 93–172 and FLR r

10.15). Also note FLR r 10.15A addressing consent orders where there are allegations of abuse or family violence.

F15. Domestic and family violence cases

Where there is domestic or family violence allegations, check FLA's definition of family violence (s 4AB). Remember the definition of child abuse includes exposure to family violence.

The ICL must ensure the information before the court includes whether the child/ren witnessed or otherwise experienced the domestic or family violence.

When a filed document alleges domestic or family violence or a risk of domestic or family violence by one party the court must consider interim or procedural orders to enable the matter to be dealt with expeditiously and to protect the parties and the children. In both the FamCA and the FCCA a Notice of Child Abuse, Family Violence or Risk of Family Violence (FamCA) or a Notice of Risk (FCCA) or ("the Notice") must be filed and served. The Notice sets out the allegations of domestic or family violence or risk of domestic or family violence (FLA s 67ZBB and FLR Part 2.3 apply to both the FCCA and the FamCA).

Read and be aware of the *QLS and LAQ Domestic and Family Violence Best Practice Framework for Legal and Non-Legal Practitioners*, and other *Best Practice Guidelines* published by QLS and LAQ, and the family law courts' *Family Violence Best Practice Principles*. Lawyers should also be aware of the *Queensland Government Common Risk and Safety Framework*.

Some important considerations are:

- Proactively respond to evidence of children being exposed to domestic or family violence and continue to be mindful of the impact of domestic or family violence exposure on children.
- Amend the expert referral letter and highlight any domestic or family violence issues and protection orders.
- Comply with obligations to inform the court or relevant authority in line with FLA ss 12E, 60D and/or 63DA.
- Consider the party's own risk assessment — are they accurate or minimising the risk of future domestic or family violence?
- If either of the parties are unrepresented, ensure the initial letter refers the party to court for security arrangements.
- Consider other safety issues (eg the order in which parties leave the family dispute resolution conference process or key court events and the order and timing of interviews for assessment processes).
- Consider how the ICL's behaviour may impact on a family's experience of domestic or family violence.
- Consider the type of report needed.
- Consider who will read the report.
- Consider what information and/or assessment is sought.
- Would the report help the ICL fulfil their role?
- Use discretion before seeking very detailed reports detailing a party's or a child's personal trauma.
- Consider whether a specific request for information is more appropriate than a subpoena.
- Acknowledge the parties' non-legal needs and make appropriate referrals where necessary.
- Consider whether a social science expert in domestic or family violence should be called to give evidence.
- Do a risk assessment – use the LAQ risk assessment resources (available to inhouse lawyers only) or the family law court's *Family Violence Best Practice Principles*. Lawyers should be aware of the

Queensland Government Common Risk and Safety Framework. What is the severity of the violence? What means does the perpetrator have to carry out their threats?

- The lawyer should consider their own safety and take precautions

The *Family Violence Best Practice Principles* outline some important considerations for a court both at the interim and final hearing stage. It is important a lawyer's submissions to the court address these considerations.

The ICL should consider making arrangements for the production of copies of protection order applications and orders from the relevant Magistrates Court registry – for matters in the FamCA see FLR 15.34 and for matters in the FCCA see FCCR 15A.03. Visua Files has a precedent letter available for the use of inhouse lawyers.

F16. Preparation for hearing of interim issues

Normally, this is the first court event attended by the ICL. The ICL should consider the following references in preparing for this hearing:

1. subpoenas (see FLR Part 15.3, FCCR ch 1 Part 15A and consider FLA s 69ZW)
2. expert evidence (see FLR Part 15.5 and FCCR ch 1 Part 15A)
3. reports from treating experts /professionals
4. evidence of those matters relevant to the appropriate provisions of:
    - s 61C — each parent has parental responsibility subject to a court order
    - s 60CA — best interests are paramount consideration
    - s 61DA, s 65DAA, s 65DAC and s 65DAE — the presumption of equal shared parental responsibility and the consequences of shared or equal shared parental responsibility orders
    - s 60CC — the need to protect the child from harm and from being exposed to domestic or family violence or abuse
    - ss 60CH — need to notify the court where child is subject to child welfare laws
    - s 60CF, 67ZBA and 67ZBB need to notify the court of relevant family violence orders and court to take prompt action
    - s 65DAB — the recent parenting plan
    - s 60B — objects and principles
    - ss 60CC, 61F — factors used to determine best interests
    - ss 60I, 60J — requirements for attending family dispute resolution services before court proceedings commence (if applicable)
    - s 63DA — the option of using parenting plans rather than court orders
    - ss 65M–65P — the general obligations created by parenting orders
5. counselling for the parties
6. future court events and directions needed
7. liberty to apply
8. the appropriate forum for determining the matter — FCCA or FamCA.

At the interim hearing, all relevant material in the ICL's possession should be placed before the court in line with the rules of evidence as they apply — see FLA Part VII div 12A.

Like other lawyers, the ICL should be prepared to make submissions about court directions needed to progress the matter and to inform the court about the issues, witnesses, proposed directions and length of trial. The ICL should ensure the focus remains on the relevant issues that will assist the parties to resolve, or

the court determine the parenting arrangements needed to meet the best interests of the children. Matters to consider are:

- is the matter ready for trial? (do other things need to occur or is time needed to allow other things to happen eg counselling, completion of a course, does the child need to spend time with a parent to build up a relationship to increase the time with the parent in the future?) the number of witnesses needed and why their evidence is relevant,
- whether FLA s102NA applies and if a banning order is required, if either party is unrepresented or is likely to be unrepresented at the trial,
- the trial length — include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions,
- whether expert witnesses and a conference of experts is needed (if appropriate),
- whether a family report is needed, and
- speaking to proposed counsel and confirming availability.

Making directions to prepare a matter for trial provides a further opportunity for settlement negotiations. The ICL must ensure a grant of aid is available to attend this court event. Directions will be given for the preparation of the matter for trial (see FLR Part 12.02 and FCCR Part 10].

Immediately after the court event when directions for trial are made, the ICL should seek aid for the preparation of trial and attendance at any other court event prior to the final hearing. The ICL should:

- review their case plan
- assess the evidence needed to assist the court in determining the issues in dispute and making orders in the best interests of the children
- consider how to adduce that evidence before the court in line with the rules of evidence (as far as they apply). It is important to remember that it is not the ICL's role to adduce evidence to establish the case of a party (refer to the judgment of *T and S* (2001) FLC 93–086).

Australian Solicitors Conduct Rules relevant to mentions and interim hearings

A solicitor must not, in the presence of any of the parties or solicitors, deal with a court on terms of informal personal familiarity which may reasonably give the appearance that the solicitor has special favour with the court (r 18.1).

A solicitor must not deceive or knowingly or recklessly mislead the court and must take all necessary steps to correct any misleading statements made by the solicitor to a court as soon as possible after the solicitor becomes aware that the statement was misleading (rr 19.1–19.2).

A solicitor seeking any interlocutory relief in an ex parte application must disclose to the court all factual or legal matters which are within their knowledge and are not protected by legal professional privilege and that the solicitor has reasonable grounds to believe would support an argument against granting relief or limiting its terms adversely to the client (r 19.4).

A solicitor must, at the appropriate time in the hearing of a case if the court has not yet been informed of that matter, inform the court of any binding authority, where there is no binding authority, any authority decided by an Australian appellate court and any applicable legislation known to the solicitor and which the solicitor has reasonable grounds to believe to be directly on point, against the client's case (rr 19.6, 19.8).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

A solicitor must not, outside an ex parte application or a hearing of which an opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless the court has first communicated with the solicitor…or the opponent has consented beforehand…a solicitor must promptly tell the opponent what passes between the solicitor and a court in a communication… (rr 22.5, 22.6).

A solicitor must take steps to inform the opponent as soon as possible after the solicitor has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, of that fact and the grounds of the application, and must try, with the opponent's consent, to inform the court of that application promptly (r 22.8).

F17. Family reports and other expert reports

An ICL should consider making arrangements for family report preparation or appointing a single expert witness (refer to FLR Part 15.5 and FCCR Part 15). If the matter is before the FamCA then this matter should be dealt with on the first return date (FLR ch 16A).

Consider the child/ren's special needs, if any, when deciding whether a family report or any other type of expert report is needed. Be wary of obtaining unnecessary reports and exposing the child to systems abuse. If there are already reports or there is existing information that can be utilised by the court, a family report may not be necessary initially.

ICLs and family report writers should be aware of and comply with the *Australian Standards of Practice for Family Assessments and Reporting*.

When engaging a family report writer, the ICL should ensure that expert engaged is appropriately qualified and experienced - in particular family assessors must be qualified social science professionals and function as independent and impartial assessors:

a. the qualifications held by the family assessor must be either those accepted by the family law courts, or sufficient to be able to establish their expertise as a forensic assessor of parents, children, family relationships, parental capacity and factors impacting on the welfare and parenting of children.
b. as an expert witness, family assessors should have appropriate training, qualifications and experience to assess the impact and effects (both short and long term) of domestic and family violence or abuse, or exposure to domestic and family violence or abuse, mental health problems and drug or alcohol misuse on the children and any party to the proceedings.

c. generally family assessors should have qualifications such that they are eligible for membership or are members of the Australian Association of Social Workers (AASW) or are registered as a psychologist with the Australian Health Practitioners Regulation Authority (AHPRA), meet the mandated or recommended requirements of those bodies in relation to ongoing professional development, and have professional clinical experience working with children and families.
d. regardless of how the arrangements for their services are made and how the family assessor is to be remunerated, the family assessor should always function as an impartial assessor.
e. family assessors should provide up to date particulars of their qualifications and experience as a social scientist and family assessor as part of their report.

To check that a psychologist is registered, a search can be conducted via the APHRA website.

Anyone who is wanting to practice as a psychologist in Queensland must be registered. To be registered, a psychologist must have undertaken six years of study; of which a minimum of four years must be tertiary study, and a maximum of two years may be supervised practice. The supervision component is via a formal Board-approved Supervised Practice Program, and requires the submission of pieces of assessment, and passing an examination.

For social workers, the situation is different. Social workers do not need to be registered to practice, and do not need to be members of the AASW. AASW membership is voluntary, and many social workers choose not to join (typically for financial reasons). AASW only allows membership to those with approved social work qualifications, and quality assures the content of tertiary courses to determine eligibility. That is why most social work positions state that an applicant must be "eligible for membership of the AASW"; as membership cannot be enforced, but eligibility indicates an appropriate tertiary qualification.

Due to social workers lacking a formal registration requirement, there is nowhere that ICLs can confirm that a social worker is eligible for membership with AASW. A list of current accredited Australian courses can be found on the AASW website. However, this has been known to change from time to time; and does not include international qualifications. AASW does offer a fee-for-service assessment, whereby they will determine whether overseas studies are sufficient for membership.

ICLs should ask social workers to confirm that they are a member or eligible for membership of AASW.

The ICL must give proper instructions to the family report writer and in particular comply with FLR Part 15.5 and FCCR Part 15.

In house lawyers should refer to the Expert referral precedent in the precedent package (LAQ access only) when briefing the expert.

An ICL is not bound by the recommendations of the report writer and it should be noted that the report is only one piece of the evidence. The ICL must make submissions based on all of the evidence before the court.

F18. After interim issues have been determined

If there is a breakdown in arrangements for the children, the ICL should take steps to minimise the impact on the children. Matters to consider include:

- re-listing the matter
- applying to suspend any parenting order
- further counselling or therapy
- keeping the child informed
- the ongoing relationships between the child and others
- organising a legal aid family dispute resolution conference
- whether to act as broker prior to or at the conference
- the role of the ICL at the conference
- any further reports/information to assist in negotiations.

Applications by the ICL are not common and should only be brought in exceptional circumstances.

After a legal aid family dispute resolution conference, or following an appropriate period of time, the ICL should consider the state of the evidence and determine whether any further or updated expert evidence is required.

The ICL's role is very limited in contravention applications. Generally, the role is not an active one. However, where the ICL considers contravention proceedings are detrimental to the best interests of the children, or their presence may further the children's best interests, the ICL should attend and participate in the proceedings as considered appropriate or alternatively seek leave of the court to withdraw from the proceedings. This is a matter for the ICL to determine.

F19. Dealing with contact supervisors

Where there are private supervision arrangements, the ICL or family report writer should explain the supervision expectations in detail to the proposed supervisor. The ICL should speak directly to proposed supervisor to ensure they understand the need for supervision (this can mean a very detailed understanding of the reasons that supervision has been put place) and they fully appreciate the supervisor's role and responsibilities The ICL must ensure the proposed supervisor is an appropriate person to supervise and can protect the child during the visits.

It is best practice to write to the supervisor confirming their approval or otherwise as a supervisor. A copy of this letter should be sent to the parties. The letter should set out a brief statement of the reasons for the supervision and the provisions of any relevant court orders and details of the role of the supervisor and their responsibilities. The letter should also request the supervisor keep a diary of events surrounding supervision and confirm they may need to be a witness in proceedings. The supervisor should be asked to sign a copy of the letter and return that signed copy to the ICL to confirm they understand their role and their supervisory responsibilities.

The parents and the children should meet the supervisor before any formal supervision takes place. Ideally, the report writer should be involved in this introduction process. Funding and timing need to be considered should this process be adopted.

If a contact centre is to facilitate the parenting order, the centre will usually have their own induction process. Each centre has its own requirements and the ICL should be familiar with these requirements. It is important the centre is aware of the arrangements to give effect to the parenting orders; it may be necessary to seek leave of the court to provide the centre with all appropriate information.

F20. Disclosure of an expert's notes and an ICL's file

Requests for expert notes

Parties, both represented and self-represented, may request that the ICL disclose the notes from the interviews which form the basis of the assessment and report by a family report writer or other expert.

Requests are sometimes made for the notes to be produced in person and by electronic means, or to be made available to the parties to inspect or copy prior to, or in close proximity to, trial.

These notes are the property of the expert in question and there is little that an ICL can do to compel an expert to produce their notes. If a notice to produce is served upon the ICL, it is not appropriate for the ICL to provide a copy of these notes to the requesting party, as the notes are within the possession and control of LAQ (and not the ICL), in the case of experts employed by LAQ, and the possession and control of experts in private practice (and not the ICL) in other cases.

Given that the expert is not a party to the proceedings, a subpoena to the expert is the appropriate way for a party to request the notes to be produced to the court. A subpoena to produce documents issued to an expert may also require them to produce other documents in their possession evidencing communication that the expert has had with others, including the ICL.

In these circumstances, the notes and any other documents would be produced to the court and the court would consider the appropriate access to the parties and whether or not the documents produced may be

inspected and/or copied. The notes and any other documents produced would be held at the subpoena documents section of the court precincts.

ICLs who have requests made to them to have experts' notes produced should refer parties to the appropriate course of action.

Otherwise ICLs should only endorse the production of an expert's notes if there has been a court order or a court direction.

It is expected that an ICL would not oppose the production of any expert notes pursuant to a court order, direction, or subpoena.

If a court orders or directs an expert to produce their notes, or when an application is made for such order/direction, it is suggested that the ICL seek an order that the documents be held securely in the subpoena documents section of the family law courts and that the parties are to make appointments to inspect those notes. If the court will not make an order for the documents to be held in the subpoena section, then arrangements should be made to view the notes at a secure location in the ICLs' office.

Disclosure or client legal privilege for the ICL

Legal privilege does not apply to an ICL acting in a child's best interests. This is based on the fact that an ICL has an overriding duty to the court to present any evidence or make any submissions that are in the child's best interests.

Pursuant to FLA s 68LA, the ICL is not under an obligation to disclose to the court any information that the child has communicated to the ICL. However, the ICL may disclose information if they think that this is in the child's best interests (see FLA ss 68LA (6)– (8)).

ICLs should be aware that their file may be requested to be disclosed at some stage of proceedings by the parties. This would include file notes and other documents, including those that evidence communication that the ICL has had with experts and others.

ICLs should be aware that their file may be requested to be disclosed for the purposes of other proceedings (for example criminal law proceedings, inquests). This would include file notes and other documents, including those that evidence communication that the ICL has had with experts and others.

F21. Preparation for trial

Trial preparations for the family law courts has already been discussed in Part C. The same standards apply to ICLs as to any other lawyer.

The ICL should review the following matters in the lead up to the trial:

- is the matter ready for trial?
- the number of witnesses needed and why their evidence is relevant
- the length of trial — include assessment of time for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions
- whether FLA s102NA applies and if a banning order is required, if either party is unrepresented or is likely to be unrepresented at the trial
- are interpreters required and have they been arranged?
- the need for expert witnesses, their availability for the trial dates and whether a conference of experts is appropriate,
- the need for a family report
- speaking to proposed counsel and confirming date availability.

Part of the trial preparation includes consideration of what orders should ultimately be made by the court. It is appropriate to have formed a preliminary view at the trial commencement subject to any evidence that may be given in cross examination. For example, if there is to be ongoing monitoring or assistance given to the parties and their children, FLA s 65L may provide an opportunity for the courts to assist the family.

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

If there is any reason to believe a matter is not ready to proceed to trial, the matter should be brought to the court's attention as soon as possible which may involve the ICL having the matter relisted.

If a matter has settled, this should also be brought to the court's attention as soon as possible.

F22. Briefing counsel

LAQ guidelines do not normally enable counsel to be engaged for an interim issues hearing, although it is possible in exceptional circumstances.

As soon as trial dates are set and aid has been approved for the trial, counsel should be retained and briefed for the trial. Counsel must be appropriately qualified and experienced to act on behalf of the ICL, and reference should be made to the requirements for appointment as an ICL to the LAQ Independent Children's Lawyer Panel when determining if Counsel is appropriately qualified.

The ICL should arrange a conference with counsel as early as practicable, prior to the scheduled first day of trial.

It may be useful to discuss the development of the case plan with counsel.

The brief to counsel must include instructions to counsel, together with all relevant court documentation including any trial plan and *Summary of argument/Case outlines*, copies of any subpoenaed material available properly indexed (or summary if necessary, although leave to obtain copies of subpoena material should be sought by the ICL during the course of the proceedings), copies of relevant diary notes, correspondence and other documentation.

Instructions to counsel should set out the trial dates and court in which the proceedings are listed for hearing, the basic premise of the case, a list of the witnesses to be called and the summary of argument or case outline.

If there are any particular issues in the case that should be brought to counsel's attention, these issues should be clearly spelt out in counsel's instructions.

All briefs to counsel are marked "Legal Aid Brief". Where appropriate, a pro-forma invoice is forwarded to counsel with the brief. Any counsel briefed in a legal aid matter accepts the brief on the basis that they will be paid at legal aid rates which are set out in the LAQ *Scale of Fees* unless otherwise provided.

If there is a requirement to brief interstate counsel, they will also be paid in accordance with the *LAQ Scale of Fees* unless otherwise provided. Where LAQ directs the briefing of particular counsel, try to brief that particular counsel.

F23. Costs

The ICL has an obligation to provide a written statement of the actual costs incurred by the ICL up to and including the trial to the court and to each party (refer to FLR r 19.04(4)) — this is a rule not often enforced by the FamCA).

ICLs need to be aware of the rules relating to costs (FLR ch 19 and FCCR ch 1 Part 21).

If costs are an issue in the matter, then it may be essential to strictly comply with the cost-related rules to obtain an appropriate court order.

The LAQ Grants Handbook requires ICL cost recovery in certain circumstances. Parties must be notified of these guidelines when an ICL is appointed and LAQ will advise if any further steps need to be taken in relation to costs at the appropriate time.

The ICL should be mindful of the parties' capacity to meet costs and should raise this at a relevant time during the course of the proceedings. This may be relevant to matters such as costs orders and/or the payment of expenses such as the costs of an expert's report.

F24. Trial

It is part of the ICL's duties to provide the child's views to the court in proper format, and to make submissions suggesting the adoption of a course of action that is in the best interests of the child. Submissions must be based on the evidence available. In the event the ICL forms a preliminary view, it may be appropriate to inform the court at the commencement of the hearing of that view. It may not be possible to form a final view in relation to the matter until after the evidence is tested by cross-examination and at times, a concluded position may not be possible.

It may be appropriate to provide draft orders to the court and parties. Draft orders preparation can assist in facilitating a resolution to some if not all of the issues in dispute.

In making submissions, assist the court by bringing together all the threads of the case.

Australian Solicitor Conduct Rules relevant to trials

A solicitor must alert the opponent and if necessary inform the court if any express concession made in the course of a trial in civil proceedings by the opponent about evidence, case-law or legislation is to the knowledge of the solicitor contrary to the true position and is believed by the solicitor to have been made by mistake (r 19.12).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

…in proceedings in which an allegation of sexual assault, indecent assault or the commission of an act of indecency is made and in which the alleged victim gives evidence, a solicitor must not ask that witness a question or pursue a line of questioning of that witness which is intended to mislead or confuse the witness or ..be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive and …must take into account any particular vulnerability of the witness in the manner and tone of the questions that the solicitor asks (r 21.8).

A solicitor must not take any step to prevent or discourage a prospective witness or a witness from conferring with an opponent or being interviewed by or on behalf of any other person involved in proceedings (r 23).

A solicitor must not advise or suggest to a witness that false or misleading evidence should be given nor condone another person doing so; or coach a witness by advising what answers the witness should give to questions which might be asked (r 24).

A solicitor must not confer with …more than one lay witness (including a party or client) at the same time about any issue which there are reasonable grounds for the solicitor to believe may be contentious at a hearing and where (it) would affect evidence to be given by any of those witnesses unless ..(there are) reasonable grounds (r 25).

A solicitor must not confer with any witness (including a party or client) called by the solicitor on any matter related to the proceedings while that witness remains under cross-examination (with some "special circumstance" exceptions) (r 26).

In a case in which it is known, or becomes apparent, that a solicitor will be required to give evidence material to the determination of contested issues before the court, the solicitor may not appear as advocate for the client in the hearing (r 27.1).

A solicitor must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or the administration of justice (r 28).

F25. At the conclusion of the trial

The ICL should consider whether copies of any orders, reasons for judgment or copies of any of the material filed in the court, should be provided, by leave of the court, to any professional involved with the family or the police or Child Safety.

Make arrangements for the orders to be explained to the children where appropriate.

The ICL should also comply with Part A.7 - Completion of matter as appropriate.

F26. Delays in delivery of judgment

There is a protocol to be followed when asking the court for advice about the anticipated delivery of a judgment, in circumstances where a judgment has been outstanding for at least 3 months and the circumstances regarding the delay are unexplained. Further information can be found on the QLS website

If a judgment has been outstanding for a period of 6 months, and the circumstances regarding the delay are unexplained, this should be brought to the Family Law and Civil Justice Services director's attention.

F27. Appeals

An ICL has the right to appeal orders made by the court but should only do so in appropriate circumstances. When another party appeals, the ICL should participate in the appeal proceedings where appropriate.

Aid for an appeal must be sought for the ICL and counsel whether the ICL is the applicant or the respondent.

Consider meeting with the children to explain the appeal process.

F28. When child abuse is suspected

It is arguable that an ICL is obliged to make a notification to Child Safety about a child if the ICL has reasonable grounds for suspecting that a child has been abused or is at risk of being abused. The Notification must be made as soon as practicable and include the basis for the suspicion (FLA s 67ZA which refers to a "lawyer independently representing a child's interests"). The ICL is referred to as the Independent Children's Lawyer elsewhere in the FLA, which is a term with a special meaning. Arguably, FLA s 67ZA could relate to a lawyer receiving direct instructions from a child. In any event, if the lawyer, in whichever role, receives direct evidence of child abuse then they should carefully consider their position and determine if Child Safety requires notification.

Assuming the section applies to the ICL, an ICL may make a similar notification if the ICL has reasonable grounds for suspecting that a child has been ill-treated or is at risk of being ill-treated; or has been exposed or subjected or is at risk of being exposed or subjected to behaviour which psychologically harms the child.

The obligation to notify does not apply if the ICL knows the authority has been previously notified about the abuse or risk. If this situation arises the ICL should consult the Family Law and Civil Justice Services director or one of the Family Law Services' assistant directors.

While there is some protection given in FLA s 67ZB for this type of notification, it is recommended the ICL take due care before notifying Child Safety. In particular, the ICL will need to consider how they can maintain their duties generally and specifically to act impartially in the matter if they are a notifier. If a notification is made, then it may result in the ICL having to discontinue their involvement in the matter. For the ICL in particular, the notification, or more pointedly their possession of information upon which the notification is made, may mean they will need to be a witness in the proceedings.

Part G – Acting in domestic violence matters

G1. Clients experiencing or using domestic and family violence and their needs

Lawyers have a responsibility to assist clients to be safe and utilise evidence-based risk assessment tools.

Lawyers should not conflate terms used to indicate domestic and family violence dynamics (such as victim or perpetrator) as transferable to legal terms of aggrieved or respondent.

Lawyers should be aware of and comply with the *QLS and LAQ Domestic and Family Violence Best Practice Framework for Legal and Non-Legal Practitioners* and other *Best Practice Guidelines* published by QLS and LAQ. These publications provide practical hints and useful information for representing clients affected by violence. See also the family law courts' *Family Violence Best Practice Principles* and the *Queensland Government Common Risk and Safety Framework*

Lawyers should be familiar with the DV Act and DVPR and be up to date with the domestic and family violence appeal cases. Lawyers should also consult the *Domestic and Family Violence Protection Act 2012 Benchbook*, and the *National Domestic and Family Violence Bench Book*, both of which are regularly updated and available online.

Lawyers should be aware of and comply with LAQ's *Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients*

Lawyers must be aware of and comply with LAQ's *Language Services Policy* . Also see *Guidelines for working with interpreters in Queensland Courts and Tribunals*.

In cases where a disability may be a factor, lawyers will need to consider whether the client or a party in the matter has legal capacity to give instructions. This may become an issue where a client has an intellectual disability or cognitive impairment. Clients must have capacity to give lawful, competent and proper instructions to lawyers. Lawyers have legal and ethical duties to ensure that they do not accept instructions from a client who lacks capacity. In these cases, lawyers should review and consider information in the *Queensland Handbook for Practitioners on Legal Capacity* and also consider information about guardianship on the website of the Office of the Public Guardian

Lawyers must be aware of and comply with obligations under the HRA. See the Human Rights Commission website for more information.

G2. Face-to-face or telephone advice

Extra steps must be taken when advising a client who has experienced domestic or family violence. Consider the following:

- allow enough time for the interview and avoid rushing the client
- if providing telephone advice, check it is safe for the person to talk at that time
- ask about behaviours rather than using terminology (eg 'assault') the client may not understand
- don't be judgemental about the steps the client has or has not taken
- ask about the children's safety
- consider referrals to domestic and family violence prevention services or a refuge
- explore all of the allegations and ask about current concerns
- provide or send the client written material supporting the legal advice.

Inhouse lawyers should conduct a proper risk assessment using LAQ's Domestic and family violence risk assessment resources *(LAQ network access required)*. All lawyers should be aware of the *Queensland Government Common Risk and Safety Framework*. Remember that domestic and family violence can lead to domestic homicide — lawyers have a responsibility to assess the person's safety at this and all other stages of the domestic and family violence proceedings

See the *Family law and domestic and family violence advice* worksheet (Annexure A) which is a comprehensive checklist for giving advice in this area.

Australian Solicitors Conduct Rules relevant to advice

A solicitor must provide clear and timely advice to assist the client to understand the relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of engagement (r 7.1).

A solicitor must inform the client about the alternatives to fully contested adjudication of the case which are reasonably available to the client, unless the solicitor believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the litigation (r 7.2).

A solicitor must follow a client's lawful, proper and competent instructions (r 8.1).

G3. Initial interview

At the initial client interview, the lawyer should:

- arrange a qualified interpreter, if required
- be prepared to work with or through interpreters, support workers and friends or family (where appropriate and with permission), but be sure to encourage the client to participate to the greatest possible degree
- ensure the client has the *Client information sheet*
- obtain the other party's full details, including nature of relationship and current address
- explain the lawyer's role, and the limitations of that role
- explain the client's role
- assess the client's safety and their children's safety (in house lawyers should use the LAQ risk assessment resources). Lawyers should be aware of the *Queensland Government Common Risk and Safety Framework*
- assess whether police have been involved, if any, including whether any police protection notices have been issues or whether police have made any other investigations including criminal investigations
- request copies of any court documentation relevant to the matter
- get a comprehensive account of the relationship history and acts of domestic or family violence committed during that time (be as specific as possible with these instructions)
- get detailed instructions on any recent acts of domestic or family violence, and in particular what motivated the immediate desire to seek protection
- obtain instructions on why it is necessary or desirable to protect the client
- the lawyer should consider the relevant sections of the DV Act such as s 37, and determine whether a court application would be likely to succeed on the basis of the instructions and available information (the lawyer should explain these considerations to the client, and deal with the possibility that corroborating evidence may be required)

- collect information on children or other persons who may also need to be named in the protection order (explain the requirements in this regard under DV Act ss 52–55)
- collect information on the conditions the client seeks to include in the protection order and the need for any qualifications
- obtain information about any family law orders as these must be disclosed to the magistrate and attached to the application form (DV Act s 77)
- consider whether the court should exercise its power to revive, vary, discharge or suspend a family law order (FLA s 68R)
- be sympathetic to the emotions and concerns of the client — if a client is very upset, give them extra time if needed and be prepared to divert from the usual process
- be familiar with other needs or issues the client may need addressed such as children, accommodation, counselling, financial support, property settlement and ideas of reconciliation, and be prepared to offer meaningful advice and support
- give the client written legal information where possible (this is a very stressful time for the client, and they can easily forget what was said in the interview)
- If appropriate, provide written information on how domestic or family violence can affect children and themselves
- explore counselling or support options with the client — consider refuge accommodation or domestic and family violence prevention services.

G4. Temporary protection orders

If the client is in danger, make an urgent application for a temporary protection order. A court can make a temporary protection order if it is satisfied it is necessary or desirable (see DV Act ss 44–50).

Obtain clear instructions on living arrangements to determine if the order will, or needs to have the effect of, evicting the respondent to the proceedings from his or her premises. Consider DV Act ss 63–64 which outlines that a court can impose an ouster condition to prohibit a respondent from returning to the former matrimonial home, and what will happen next.

G5. Court procedure

Give the client a clear explanation of the application and court procedure. The explanation must cover all possible options and likely outcomes of the application.

G6. Implications of application

A lawyer should discuss the application's effects and implications with the client, especially the effect of the existence of a protection order. This includes the legal prohibitions placed on the respondent, the procedure if breaches occur, and the necessity and availability of a variation or revocation of the order or certain conditions if required. This is especially important if a reconciliation is likely.

G7. DV 1 Form— Application for a Protection Order completion

If a client has a grant of aid for representation, then there is an expectation that a lawyer will complete the D*V 1 Form — Application for a Protection Order* form. All sections must be completed with special attention being given those questions outlining the history and recent incidences of domestic or family violence.

Ensure that the application includes any child/ren or family members or friends which should be named, and reasons for their inclusion.

Any weapons should be declared.

Consider which conditions should be included in the protection order and reality test these with the client and whether there is sufficient evidence in their application to support the same. Tailor the conditions to allow for any family law orders, particularly parenting orders. Consider any future family law implications of the proposed conditions on the order. Allow for parenting orders or property settlement-related orders. Consider FLA s 68R and attach any family law orders to the DV1 form.

Consider whether the parties are likely to reconcile and whether the protection order should anticipate this possibility. Also consider whether it is likely the parties may attend a legal aid conference and whether the order should anticipate this possibility.

G8. Lawyer acting as an authorised person

A lawyer should not act as an authorised person on behalf of an aggrieved spouse in an application for a protection order because the contents of the application will become hearsay only. It is preferable to have the client, a family member or an associated professional complete the application and for a lawyer to appear as their legal representative.

G9. Filing an application

The application is signed and witnessed by a Justice of the Peace, Commissioner for Declarations or solicitor. Depending on the local Magistrates Court registry practice, it may be necessary to file one or four copies with the original application (some courts scan the application and send it to police). It is now possible to file the application electronically. However, if seeking an urgent hearing it would be advisable to file in person. Additional copies may be needed if there are family or friends named in the application.

Retain a copy of the application on file and for the client. If the matter is urgent, request the matter to be listed before the next available court. If this is not the case, the court will allocate a mention date in approximately four weeks on the next designated domestic and family violence callover day (timeframes will vary from registry to registry). The police will try to serve the application on the respondent in the meantime.

G10. Service

The police are required to serve all applications on the respondent. Lawyers should ensure their client is aware of this so they client can make appropriate plans for their safety, if they have concerns as to how the other party will react.

G11. Evidence and witnesses

If the protection order is contested and listed for hearing, the lawyers make arrangements to collect relevant evidence for the hearing early in the process.

Helpful information may include:

- photos of injuries at the time of the domestic or family violence or later when the injuries are more visible (eg bruising that appears a day or two later)
- statements of domestic or family violence witnesses
- diary entries
- doctor's reports

- other court orders
- police statements
- family law orders
- reports from the client's counselors
- all text and voicemail messages, emails, letters and Facebook entries and recordings.

Most courts may make trial directions prior to trial. Witnesses to specific acts of domestic or family violence need to be organised well in advance and the lawyer should attempt to speak with them prior to the hearing to determine what they will be able to say.

The lawyer must issue subpoenas in adequate time for the hearing.

G12. Negotiations with the respondent/lawyer

It may be appropriate for the lawyer to write to the respondent or their lawyer about the case's future conduct. A more detailed explanation of the allegations can be provided as well as some brief information on the application's legislative requirements and likely outcome.

It may be prudent to confirm an order will not be a criminal conviction, although criminal penalties apply to breaches, and qualifications allowing for contact will be included if appropriate.

The consent procedure could also be explained in case the respondent wishes to write to the court in advance and does not wish to attend in person.

Consent orders can be made by the court although the court may conduct a hearing if it is in the interests of justice and may refuse to make or vary the order if it poses a risk to the safety of the aggrieved spouse or people named on the order (see DV Act s 51).

The respondent may offer undertakings at any stage of the proceedings. An undertaking is simply a written agreement between the parties about their future conduct (eg they will make no further contact with the other party). A disadvantage of an undertaking is that it is not enforceable by the police. However, it may be useful as evidence in future applications.

If the client requests their whereabouts remain confidential take care when communicating with the other party's lawyer to ensure confidentiality is maintained.

Grant of aid confirmation should be provided to the other party or parties to proceedings in line with LAQ Act s 28. This is an ongoing responsibility where the parties to proceedings change.

Australian Solicitors Conduct Rules relevant to mentions and interim hearings

A solicitor representing a client in a matter that is before the court must not act as the mere mouthpiece of the client and must exercise the forensic judgements called for during the case independently and after consideration of the client's instructions where applicable (r 17.1 and see exception in r 17.2).

A solicitor must not make submissions or express views to a court on any material evidence or issue in the case in terms which convey or appear to convey the solicitor's personal opinion on the merits of that evidence or issue (r 17.3).

A solicitor must not, in the presence of any of the parties or solicitors, deal with a court on terms of informal personal familiarity which may reasonably give the appearance that the solicitor has special favour with the court (r 18.1).

A solicitor must not deceive or knowingly or recklessly mislead the court and must take all necessary steps to correct any misleading statements made by the solicitor to a court as soon as possible after the solicitor becomes aware that the statement was misleading (rr 19.1–19.2).

A solicitor seeking any interlocutory relief in an ex parte application must disclose to the court all factual or legal matters which are within their knowledge and are not protected by privilege and that the solicitor has reasonable grounds to believe would support an argument against granting relief or limiting its terms adversely to the client (r 19.4).

A solicitor must, at the appropriate time in the hearing of a case if the court has not yet been informed of that matter, inform the court of any binding authority, where there is no binding authority, any authority decided by an Australian appellate court and any applicable legislation known to the solicitor and which the solicitor has reasonable grounds to believe to be directly on point, against the client's case (rr 19.6, 19.8).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

A solicitor must not, outside an ex parte application or a hearing of which an opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless the court has first communicated with the solicitor…or the opponent has consented beforehand…a solicitor must promptly tell the opponent what passes between the solicitor and a court in a communication… (rr 22.5–22.6).

A solicitor must take steps to inform the opponent as soon as possible after the solicitor has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, of that fact and the grounds of the application, and must try, with the opponent's consent, to inform the court of that application promptly (r 22.8).

G13. Arrangements for court

Ensure appropriate arrangements have been made with the client for their appearance at court. If there are security or safety issues, it may be wise to meet the client at the office and accompany them to the court. In extreme cases the court staff and police should be informed of any concerns. Read and be aware of the Queensland Courts' *Protocols 2012*.

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

At some court houses, there is a safety room that is available for women. Some safety rooms enable direct access in and out of the court room. This can be arranged with the local violence prevention worker, court security or a court staff member on arrival at court.

Advise the client it is preferable they don't bring their children into the safe-room or to court as court staff are not responsible for supervising child/ren.

The lawyer should also take precautions for their own safety at all times. Liaise with security at the Court if necessary.

G14. The court process

Shield the client from any unnecessary conflict, or even contact with the other party if appropriate. This may mean that the client does not attend court or does not enter the court when the matter is called on. It is not a requirement for the client to be present in court at mention dates, but individual magistrates may need to be informed as to the reason for their absence especially where an ex- parte order including an ouster order is sought. Separate rooms are sometimes available for the aggrieved and support workers to wait prior to their applications being heard.

Negotiate with the respondent as this may result in either an undertaking to consent or an expression of a desire to contest. Either way, this means that the client will not be required in court. Explain the negotiations to the client at all times. Ensure that the client's position is not compromised in any way and always seek instructions before agreeing to any proposals.

Do not advise the client to consent to an undertaking if they need the protection of a protection order and the protection of the police to enforce it particularly if there are allegations of serious abuse that compromises their safety such as strangulation. Lawyers should be aware of the *Queensland Government Common Risk and Safety Framework*.

Ensure that there is no material on a file that is visible to the respondent at the bar table which may identify the client's whereabouts including when making submissions

G15. The application

If a respondent consents to an order, the matter will be called on and both parties will make their appearances. The magistrate can then be advised that the respondent has agreed to consent and whether it is without admissions. The court should be informed of the terms of the order and length of the order that are being agreed to, and the court should explain the effect of the order to the respondent. The respondent is then asked to wait for the orders to be typed. The aggrieved may choose not to remain and leave the court safely before the respondent receives the order and can collect the order at a later time or have it posted or emailed to them.

G16. Preparation for hearing

If the respondent does not consent to an order being made the court will be asked to set the matter down for hearing. The court will make Trial directions. If you are appearing on a mention when the trial directions are made, consider any other procedural matters such as return date for the issue of subpoenas and whether extra time may be needed for example where interstate documents need to be produced. You should put the court on notice if an application is to be made for the aggrieved to be a protected person. You should not assume that application will be successful on the day of hearing. Note the sections of DV Act regarding practice and procedure including the ability to have a client deemed a protected witness (DV Act ss 147–153).

When preparing for trial, the lawyer should:

- ensure updated grant/s of aid are available
- inform the client in writing of the trial date, explaining any filing dates they must comply with
- confirm the need for the client to attend trial, together with their witnesses and steps to be taken to prepare for trial
- explain a failure to comply with the trial directions may lead to their application being dismissed or an order for costs being made.
- prepare the client's affidavit in draft and forward it to the client for perusal. Clear advice needs to be given to the client about swearing the affidavit and the implications of making false or misleading statements.

- the trial affidavit should be drafted bearing in mind the legal elements that need to establish and the submissions that will be made at the conclusion of your client's case as supported by relevant case law
- obtain any supporting documentation such as photographs, emails, text messages, recordings.
- consider any relevant appeal case law
- prepare any supporting witness affidavits
- issue subpoenas and seek leave to inspect together with conduct monies
- inspect any material returned under subpoena and consider how it may support your client's case and provide advice as to any impacts it has on prospects
- inform witnesses of trial dates and ensure they have a copy of their affidavits of evidence, their availability to give evidence, and arrange times for their attendance for cross-examination
- advise the other party which of their witnesses will be required for cross examination
- arrange qualified interpreters, as required
- the lawyer should be aware of any relevant conditions which may prevent the client from adequately proofing affidavit material (eg illiteracy, language difficulties or diminished cognitive functioning and the relevant jurat should be used and complied with in those circumstance)
- consider seeking a direction closer to Trial for unrepresented respondents to be prohibited from cross examining the Aggrieved (DV Act s.151).
- consider the *Briginshaw* principle, if particularly serious allegations are made that are likely to result in criminal prosecution.

G17. At hearing

Explain to the client the lay out of the court and who might be present. They may need assurance that the court is closed to the general public but may still have a number of people in the court. You should outline their individual roles and where each party may be sitting in the court

Prepare cross examination questions and submissions

At a hearing, some magistrates will require an opening statement if a DV Act s 37 statement has not already been filed pursuant to trial directions

The aggrieved gives evidence to support the application and will be subjected to cross examination unless declared a protected witness

All witnesses are called before the respondent has the opportunity to respond. The same cross examination and re-examination process applies.

Final submissions are then made, and the magistrate gives judgment.

The rules of evidence do not strictly apply to these proceedings (DV Act s 145) however the hearings follow the usual court process and where possible evidentiary rules are upheld. The balance of probabilities is the burden of proof.

Australian solicitor conduct rules relevant to trials

A solicitor must alert the opponent and if necessary inform the court if any express concession made in the course of a trial in civil proceedings by the opponent about evidence, case-law or legislation is to the knowledge of the solicitor contrary to the true position and is believed by the solicitor to have been made by mistake (r 19.12).

A solicitor who, as a result of information provided by the client or a witness called on behalf of the client, learns during a hearing or after judgment or the decision is reserved and while it remains pending, that the client or a witness called on behalf of the client has…lied…falsified a document…suppressed …material evidence upon a topic where there is a positive duty to make a disclosure…must advise the client that the court should be informed of the lie, falsification or suppression and request authority so to inform the court; and refuse to take any further part in the case unless the client authorises the solicitor to inform the court of the lie, falsification or suppression and must promptly inform the court of the lie, falsification or suppression upon the client authorising the solicitor to do so but otherwise may not inform the court of the lie, falsification or suppression (r 20.1).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

…in proceedings in which an allegation of sexual assault, indecent assault or the commission of an act of indecency is made and in which the alleged victim gives evidence, a solicitor must not ask that witness a question or pursue a line of questioning of that witness which is intended to mislead or confuse the witness or ..be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive and …must take into account any particular vulnerability of the witness in the manner and tone of the questions that the solicitor asks (r 21.8).

A solicitor whose client informs the solicitor that the client intends to disobey a court's order must: advise the client against that course and warn the client of its dangers; not advise the client how to carry out or conceal that course; and not inform the court or the opponent of the client's intention unless: the client has authorised the solicitor to do so beforehand; or the solicitor believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety (r 20.3).

A solicitor must not take any step to prevent or discourage a prospective witness or a witness from conferring with an opponent or being interviewed by or on behalf of any other person involved in proceedings (r 23).

A solicitor must not advise or suggest to a witness that false or misleading evidence should be given nor condone another person doing so; or coach a witness by advising what answers the witness should give to questions which might be asked (r 24).

A solicitor must not confer with more than one lay witness (including a party or client) at the same time about any issue which there are reasonable grounds for the solicitor to believe may be contentious at a hearing and where (it) would affect evidence to be given by any of those witnesses unless ..(there are) reasonable grounds (r 25).

A solicitor must not confer with any witness (including a party or client) called by the solicitor on any matter related to the proceedings while that witness remains under cross-examination (with some "special circumstance" exceptions) (r 26).

In a case in which it is known, or becomes apparent, that a solicitor will be required to give evidence material to the determination of contested issues before the court, the solicitor may not appear as advocate for the client in the hearing (r 27.1).

A solicitor must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or the administration of justice (r 28).

G18. The impact of parenting orders in domestic and family violence matters

There is a positive obligation for any person who applies for a protection order to disclose any family law orders they are a party to (DV Act s 77); these should be attached to the application form.

The lawyer must ensure the conditions on a client's protection order are consistent with any parenting orders or other order under FLA Part VII.

Give consideration to FLA Part VII div 11.

It is important to understand the consequences of inconsistencies between the orders and to prepare any matter to address this issue. FLA s 68Q provides that protection orders inconsistent with parenting orders or injunctions are invalid. This must be explained to the client.

However, a state court determining a protection order application (whether to make or vary such an order) may, under FLA s 68R, revive, vary, discharge or suspend a parenting order; a recovery order; an injunction under FLA s 68D or s 114; an undertaking; a registered parenting plan or a recognisance, if any of these provide or imply for a person to spend time with a child.

There are limitations on this power:

1. The court must not take these steps unless it also makes or varies a protection order (final or interim), and if the court has material before it that was not before the court that made that order or injunction referred to above.
2. The court must not discharge such an order, injunction or arrangement to make an interim protection order or interim variation to a protection order.
3. The court must consider the purposes of FLA Part VII Div 11 (ie resolve inconsistencies, ensure people are not exposed to domestic or family violence (defined in FLA) and to achieve the FLA's objects and principles).
4. The court must consider the best interests of the child.
5. The court must be satisfied it is appropriate to vary, discharge or suspend the order or injunction if the person has been exposed to or is likely to be exposed to domestic or family violence (defined in FLA) resulting from the order or injunction's operation.
6. DV Act requires the court to not diminish the standard of protection given by the protection order in an attempt to make it consistent with a family law order.
7. If the court is exercising its power under DV Act s 78, it must give the parties to the proceedings a reasonable opportunity to present evidence and prepare and make submissions about the exercise of the power

The state court does not need to apply the following FLA provisions when making the new parenting order:

- s 65C — who may apply for a parenting order
- s 65F (2) —the parties' requirement to attend counselling
- s 60CG — the need to consider a risk of domestic or family violence (defined in FLA)
- s 69N — the requirement to transfer proceedings
- any provision that would otherwise make the child's best interests paramount (note the child's best interests are still taken into account even if not paramount — FLA s 68R(5)(b))
- any provision of the act or rules specified in FLA regulations.

When making an interim protection order or interim variation of a protection order, the court also has discretion to consider the children's views and any FLA or FLR provisions that do not apply (see FLA s 68S (2)).

The court may dispense with any otherwise applicable court rules (see FLA s 68R (3)).

If the state court exercises the power when making a temporary protection order or a temporary variation to such an order, then the revival, variation or suspension of a family law order ceases to have effect at the

earlier of the time the interim order stops being in force and the end of the 21 day period starting when the interim order was made.

No appeal lies in relation to the revival, variation or suspension of the family law order.

G19. Appeal

After reasons for judgment are delivered and/or orders are made, lawyers should consider the appropriateness of same and the potential merit for appeal or review.

As appropriate lawyers should discuss the matter with the client including:

- the appeal timeframe
- risk of a less favourable outcome
- potential liability for costs if unsuccessful
- effect of appeal on the execution of order.

All time limits must be observed.

G20. Initial/final contribution

Lawyers must ensure the initial or final contribution has been paid or arrangements have been made for the final contribution payment.

G21. Completion of matter

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

If at any stage in proceedings a lawyer is refused a grant of legal aid to continue to represent their client, they should immediately notify the court and file any appropriate documentation to withdraw. If the time period between legal aid being refused and the next court event does not allow for this formal notification, then it is expected the lawyer will attend the court event and formally withdraw.

The lawyer should ensure all accounts are finalised in a timely manner at the conclusion of the matter.

Lawyers should notify LAQ of the outcome after each grant of aid completion and when submitting their final account for payment and file finalisation. In-house staff will not be able to finalise a file unless a report has been submitted to LAQ Grants on the outcome of each grant of aid.

In-house lawyers should refer to the *File management standards – litigation support officers* to be aware of their responsibilities in closing a file.

Part H – Acting as domestic and family violence duty lawyer

H1. Domestic and family violence duty lawyer services

LAQ's domestic and family violence duty lawyer services offer free legal information and initial legal advice for people who are making an application for or responding to an application for a domestic violence protection order in the Magistrates Court at a selection of locations in Queensland.

The duty lawyer service is for unrepresented applicants (aggrieved) and respondents who are to appear in court on the day.

H2. The duty lawyer

Duty lawyers must have personally completed the domestic and family violence duty lawyer training and any refresher training provided by LAQ.

The duty lawyer should, ideally, spend no more than 70 minutes with a client.

If there are no clients to assist as duty lawyer, the maximum time that can be charged to LAQ is 60 minutes.

The duty lawyer should be aware of the requirements outlined in Part G1 - Working with people who experience or use domestic and family violence.

The duty lawyer should be aware of the court support worker services available for providing on-site support regarding safety and information about men's behaviour change programs and how to refer clients to them.

H3. Arrival and breaks throughout the day

Duty lawyers must arrive at least 30 minutes prior to commencement of court to commence seeing prospective clients, take instructions and provide advice.

Duty lawyers must ensure they take breaks throughout the day, including a lunch break of a minimum of 30 minutes.

H4. Preparation

There should be rooms allocated for the duty lawyers to speak with clients. Duty lawyers should consult the court list (if available) from the domestic and family violence duty lawyer clerk or court staff. Duty lawyers should have access to:

- a supply of LAQ's *Domestic and family violence duty lawyer forms* and *domestic and family violence duty lawyer session reports*,
- relevant legislation - DV Act and DFVPR,
- legal aid application forms, and
- relevant LAQ publications and factsheets, which can be ordered from the LAQ website.

Conflict check prior to taking instructions and advising. Arrange to see the other party in the event of conflict, if possible, or for a conflict letter to be provided.

H5. Instructions and advice

Duty lawyers must complete a *Domestic and family violence duty lawyer form* and record the client's instructions and their legal advice to the client on the duty lawyer form. In-house lawyers may record their legal advice electronically in LAQ Office, if possible.

Client instructions will depend on their decisions in their matter which might include:

- details of the relationship including history (determine if a relevant relationship — DV Act s 37(1)(a))
- details of alleged acts of domestic or family violence (DV Act ss 8–12) during the relationship, in particular, specifics of any recent alleged acts of domestic or family violence. Advise if the alleged acts are considered domestic and family violence. If seeing the applicant, include what motivated them to seek protection (DV Act s 37(1)(b))
- why (applicant) or why not (respondent) is it necessary or desirable to protect the aggrieved from domestic and family violence (DV Act s 37(1)(c))
- details of any children or other persons who may also be named in the protection order (DV Act ss 52–54)
- is a temporary protection order sought (DV Act ss 44–50)
- what conditions are sought, or court may impose (DV Act ss 28, 56–67) on both a temporary and final basis
- obligation to disclose any existing family law order (DV Act s 77) and whether the court should exercise its power to revive, vary, discharge or suspend the family law order (DV Act s 78)
- discuss options in relation to behaviour change programs and Intervention Orders (DV Act s 69)
- check the arrangements for a safe-room at the court and liaise with security staff as and when necessary.

If required, a qualified interpreter is to be engaged by the duty lawyer.

H6. Negotiations

If reasonably practical and considering service demands, duty lawyers should attempt limited negotiations with legal representatives for the other party or police prosecutor.

Duty lawyers may negotiate issues such as amending, substituting or withdrawing proposed conditions in order to reach an agreement on a temporary or final basis.

Duty lawyers should also consider exemptions to conditions for family dispute resolution or reaching an agreement on consent without admissions basis for the court to may make a temporary protection order or a protection order (DV Act s 51).

Duty lawyers are not to attempt to negotiate in matters requiring complex and lengthy negotiations. Duty lawyers are to adjourn these matters and advise parties to apply for legal aid or get private legal representation for the hearing of the application for a protection order, and for family dispute resolution for any related parenting matters.

It will also not be practical for duty lawyers to undertake protracted negotiations across multiple mentions of a proceeding.

H7. Applications for legal aid

The duty lawyer should if appropriate, assist with or arrange for intake staff to assist with the completion of a legal aid application form, and provide advice to the client on whether they are likely to be financially eligible for a grant of legal aid.

In-house duty lawyers should also consider what assistance they may provide in the following circumstances:

- a client has a pending legal aid application – including, for example, contacting the grants officer to identify if there are any outstanding documents, providing a copy of any new documents (eg a family report), making a submission in support of a grant of aid, and completing a grants checklist.
- a client has been refused legal aid – including, for example, assisting with on-forwarding a letter of appeal written by the client, a submission in support of a grant of aid where the duty lawyer considers their client may be meritorious. The grants officer can overturn their own decision and therefore may need not refer the matter to a review officer) or providing any outstanding documents (eg proof of income).
- If the client has been refused legal aid and this decision has been upheld by the review officer – a duty lawyer may request the review officer reconsider the decision if new evidence has arisen that supports the client receiving a grant of aid (eg family report). This request is sent to LAQ Grants.

If in-house duty lawyers are assisting clients with legal aid applications then they should be aware of LAQ's best practice for accepting LAQ application forms (LAQ intranet access required).

H8. Representation

The duty lawyer may assist with applying for an adjournment and with short or procedural mentions. The duty lawyer may appear for an unrepresented party if they have limited ability to appear on their own behalf. The duty lawyer should consider any disability, literacy, language barrier or cultural issue, and geographical location when determining the level of assistance with representation. Priority should be given to assisting the most vulnerable unrepresented parties.

When representing a client, announce your appearance as a domestic and family violence duty lawyer at each appearance. After each appearance, record the following information on the *Domestic and family violence duty lawyer form*:

- the result of the mention, if the application has been adjourned, include the next date and purpose of the adjournment, and
- the conditions of any protection order including the expiration of the order, and if a temporary protection order, the directions for filing material and the conditions of the temporary protection order.

These details should be provided to the client using the tear-off on the duty lawyer form, or via the *Domestic and family violence duty lawyer note pad* if available, to provide the client with details of the next steps.

No appearance will be made for:

- for a party who is privately represented
- for a party who has a current grant of legal aid for representation, as these appearances are the legally-aided lawyer's responsibility
- on review mentions unless the matter can be settled on a final orders basis
- on mentions in respect of material produced under a subpoena or applications to set aside subpoenas, or where a party has failed to disclose a requested document or information
- on final contested hearings.

H9. Appeal

If the duty lawyer considers an appeal should be made, the duty lawyer should discuss this with the client and provide advice about time limits and procedures for an appeal. This advice must be recorded on the *Domestic and family violence duty lawyer* form.

When appropriate, the duty lawyer should assist the client to apply for a grant of legal aid to appeal.

H10. Administrative requirements

The duty lawyer must complete any necessary administrative work within three business days of the appearance. This includes:

- completing the *Domestic and family violence duty lawyer session report* and lodging the information on LAQ Grants Online
- in-house lawyers are to complete data entry in accordance with LAQ's *Family Law Services data entry manual for duty lawyer services*
- arranging for legal aid application forms to be lodged
- attending any follow-up work and referrals
- consideration of flagging the next in court date, in the event that the lawyer is rostered for duty lawyer on that day
- where a client has identified current or imminent concerns for their safety, the duty lawyer should encourage the client to connect with the court support workers for safety planning or reconnect with any existing domestic and family violence supports the client has.

Part HA – Domestic and family violence duty lawyer services where an enhanced service is offered

HA1. Domestic and family violence duty lawyer services

LAQ's domestic and family violence duty lawyer services offer free legal information and initial legal advice for people who are making an application for or responding to an application for a domestic and family violence protection order in the Magistrates Court at a selection of locations in Queensland. In certain locations representation services can also be provided for certain court events.

The duty lawyer service is for unrepresented applicants (aggrieved) and respondents who are to appear in court on the day.

HA2. The duty lawyer

Duty lawyers must have personally completed the domestic and family violence duty lawyer training and any refresher training provided by LAQ.

The duty lawyer should, ideally, spend no more than 70 minutes with a client.

If there are no clients to assist as duty lawyer, the maximum time that can be charged to LAQ is 60 minutes.

The duty lawyer should be aware of the requirements outlined in Part G1 - Working with people who experience or use domestic and family violence.

The duty lawyer should be aware of the court support worker services available for providing on-site support regarding safety and information about men's behaviour change programs and how to refer clients to them.

HA3. Arrival and breaks throughout the day

Duty lawyers must arrive at least 30 minutes prior to commencement of court to commence seeing prospective clients, take instructions and provide advice and identify matters that might require a representation service.

Duty lawyers must ensure they take breaks throughout the day, including a lunch break of a minimum of 30 minutes.

HA4. Preparation

There should be rooms allocated for the duty lawyers to speak with clients. Duty lawyers should consult the court list (if available) from the domestic and family violence duty lawyer clerk or court staff. Duty lawyers should have access to:

- a supply of LAQ's *Domestic and family violence duty lawyer forms* and *domestic and family violence duty lawyer session reports*,
- relevant legislation - DV Act and DFVPR,
- legal aid application forms, and
- relevant LAQ publications and factsheets, which can be ordered from the LAQ website.

Conflict check prior to taking instructions and advising. Arrange to see the other party in the event of conflict, if possible, or for a conflict letter to be provided.

HA5. Intake

Duty lawyers should be aware of and comply with any agreed intake protocol and any memorandum of understanding for the court they are appearing in.

HA6. Instructions and advice

Duty lawyers must complete a *Domestic and family violence duty lawyer form* and record the client's instructions and their legal advice to the client on the duty lawyer form. Inhouse lawyers may record their legal advice electronically in LAQ Office, if possible.

Client instructions will depend on their decisions in their matter which might include:

- details of the relationship including history (determine if a relevant relationship — DV Act s 37(1)(a))
- details of alleged acts of domestic or family violence (DV Act ss 8–12) during the relationship, in particular, specifics of any recent alleged acts of domestic or family violence. Advise if the alleged acts are considered domestic and family violence. If seeing the applicant, include what motivated them to seek protection (DV Act s 37(1)(b))
- why (applicant) or why not (respondent) is it necessary or desirable to protect the aggrieved from domestic and family violence (DV Act s 37(1)(c))
- details of any children or other persons who may also be named in the protection order (DV Act ss 52–54)
- is a temporary protection order sought (DV Act ss 44–50)
- what conditions are sought, or court may impose (DV Act ss 28, 56–67) on both a temporary and final basis
- obligation to disclose any existing family law order (DV Act s 77) and whether the court should exercise its power to revive, vary, discharge or suspend the family law order (DV Act s 78)
- discuss options in relation to behaviour change programs and Intervention Orders (DV Act s 69)
- check the arrangements for a safe-room at the court and liaise with security staff as and when necessary.

If required, a qualified interpreter is to be engaged by the duty lawyer.

HA7. Negotiations

If reasonably practical and considering service demands, duty lawyers should attempt negotiations with legal representatives for the other party or police prosecutor.

Duty lawyers may negotiate issues such as amending, substituting or withdrawing proposed conditions in order to reach an agreement on a temporary or final basis.

Duty lawyers should also consider exemptions to conditions for family dispute resolution or reaching an agreement on a consent without admissions basis for the court to make a temporary protection order or a protection order (DV Act s 51).

Duty lawyers can attempt to negotiate in matters requiring complex and lengthy negotiations. However, duty lawyers should consider applying to adjourn these matters and assist parties likely to be eligible to apply for legal aid for representation for the hearing of the application for a protection order, and for family dispute resolution for any related parenting matters. If parties are unlikely to be eligible for legal aid, they should be advised to get private legal representation.

It will generally not be practical for duty lawyers to undertake protracted negotiations across multiple mentions of a proceeding and again consideration should be given to applying for legal aid.

HA8. Applications for legal aid

The duty lawyer should if appropriate, assist with the completion of a legal aid application form, and provide advice to the client on whether they are likely to be financially eligible for a grant of legal aid.

In-house duty lawyers should also consider what assistance they may provide in the following circumstances:

- a client has a pending legal aid application – including, for example, contacting the grants officer to identify if there are any outstanding documents, providing a copy of any new documents (eg. a family report), making a submission in support of a grant of aid, and completing a grants checklist.
- a client has been refused legal aid – including, for example, assisting with on-forwarding a letter of appeal written by the client, a submission in support of a grant of aid where the duty lawyer considers their client may be meritorious. The grants officer can overturn their own decision and therefore may need not refer the matter to a review officer) or providing any outstanding documents (eg proof of income).
- If the client has been refused legal aid and this decision has been upheld by the review officer – a duty lawyer may request the review officer reconsider the decision if new evidence has arisen that supports the client receiving a grant of aid (eg family report). This request is sent to LAQ Grants.

If in-house duty lawyers are assisting clients with legal aid applications then they should be aware of LAQ's best practice for accepting LAQ application forms (LAQ intranet access required).

HA9. Representation

The duty lawyer can assist with applying for an adjournment and with short or procedural mentions.

The duty lawyer can appear for an unrepresented party if they have limited ability to appear on their own behalf. The duty lawyer should consider any disability, literacy, language barrier or cultural issues, and geographical location when determining the level of assistance with representation. Priority should be given to assisting the most vulnerable unrepresented parties.

The duty lawyer should consider appearing for an unrepresented party if such assistance is likely to assist the court to resolve the matter. It is expected that under the enhanced duty lawyer model, parties requiring assistance will be represented in court.

When representing a client, a duty lawyer should announce their appearance as a domestic and family violence duty lawyer. After each appearance, the duty lawyer should record the following information on the *Domestic and family violence duty lawyer* form:

- the result of the mention, if the application has been adjourned, include the next date and purpose of the adjournment, and
- the conditions of any protection order including the expiration of the order, and if a temporary protection order, the directions for filing material and the conditions of the temporary protection order.

These details should be provided to the client using the tear-off on the duty lawyer form, or via the *Domestic and family violence duty lawyer note pad* if available, to provide the client with details of the next steps.

No appearance will be made for:

- for a party who is privately represented
- for a party who has a current grant of legal aid for representation, as these appearances are the legally-aided lawyer's responsibility
- on review mentions unless the matter can be settled on a final orders basis
- on mentions in respect of material produced under a subpoena or applications to set aside subpoenas, or where a party has failed to disclose a requested document or information
- on final contested hearings.

HA10. Appeal

If the duty lawyer considers an appeal should be made, the duty lawyer should discuss this with the client and provide advice about time limits and procedures for an appeal. This advice must be recorded on the *Domestic and family violence duty lawyer* form.

When appropriate, the duty lawyer should assist the client to apply for a grant of legal aid to appeal.

HA11. Administrative requirements

The duty lawyer must complete any necessary administrative work within three business days of the appearance. This includes:

- completing the *Domestic and family violence duty lawyer session report* and lodging the information on LAQ Grants Online
- in-house lawyers are to complete data entry in accordance with LAQ's *Family Law Services data entry manual for duty lawyer services*
- arranging for legal aid application forms to be lodged
- attending any follow-up work and referrals
- consideration of flagging the next in court date, in the event that the lawyer is rostered for duty lawyer on that day
- where a client has identified current or imminent concerns for their safety, the duty lawyer should encourage the client to connect with the court support workers for safety planning or reconnect with any existing domestic and family violence supports the client has.

Part I – Acting in child protection matters

I1. Clients involved with the child protection system and their needs

Lawyers should be familiar with the CPA, CCA, CCR, DCPLA, *Director of Child Protection Litigation – Director's Guidelines*, *Child Safety Practice Manual* and the HRA.

Lawyers should also consult the *Childrens Court Child Protection Proceedings Benchbook* which is online.

Lawyers should be aware of and comply with the *QLS and LAQ Domestic and Family Violence Best Practice Framework for Legal and Non-Legal Practitioners*, and other *Best Practice Guidelines* published by QLS and LAQ. These publications provide practical hints and useful information for representing clients affected by violence.

It is important to prioritise client safety and regularly screen for risk at all stages of the child protection proceedings. In-house lawyers should be aware of and use LAQ's risk assessment resources *(LAQ network access required)*. All lawyers should be aware of the *Queensland Government Common Risk and Safety Framework*.

Lawyers should be aware of and comply with LAQ's *Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients*

Lawyers must also be aware of and comply with LAQ's *Language Services Policy*. See also *Guidelines for working with interpreters in Queensland courts and tribunals*

In cases where a disability may be a factor, lawyers will need to consider whether the client or a party in the matter has legal capacity to give instructions. This may become an issue where a client has an intellectual disability or cognitive impairment. Clients must have capacity to give lawful, competent and proper instructions to lawyers. Lawyers have legal and ethical duties to ensure that they do not accept instructions from a client who lacks capacity. In these cases, lawyers should review and consider information in the *Queensland Handbook for Practitioners on Legal Capacity* and also consider information about guardianship on the website of the Office of the Public Guardian

Lawyers must be aware of and comply with obligations under the HRA. See the Human Rights Commission website for more information.

I2. Direct representative

A direct representative is a lawyer who acts on the instructions of the child or young person (under 18 years of age), usually a subject child to the proceedings. A direct representative is not a best interests representative.

Lawyers acting as direct representative must be aware of and comply with LAQ's *Best practice guidelines for working with children and young people* and its supporting *framework*. In-house staff should honour LAQ's *Service promise to children and young people.*

Children and young people must have the capacity to instruct a lawyer in order for a confidential relationship to be established and the lawyer to be able to take and act on instructions from the young person.

At all stages in the proceedings, the direct representative will need to make an assessment of the child or young person's capacity to provide instructions. The age of the child is not a determining factor as to whether the client can be represented through a direct representative.

LAQ considers that a child or young person is competent to provide instructions when:

1. they have an understanding of the impact of any decisions they are making,
2. they are willing to give instructions to a lawyer, and
3. the child has sufficient intellectual capacity and emotional maturity to understand the basis of their request for assistance.

The lawyer must keep a copy of their file notes assessing capacity at every stage of the proceedings on file.

Lawyers acting as direct representatives can contact the in-house child protection team for guidance on assessing the capacity of young people and providing direct representation.

Direct representatives are required to abide by Part I of these case management standards as a child is a party to the child protection proceedings. In addition to the standards set out in Part I, the direct representative has a duty to:

- Ensure that any instructions taken from a child or young person are taken independently and confidentially, without the influence of the other parties or a non-party. The lawyer should only speak with other parties or a non-party in a matter with the consent of the young person.

- Take care to ensure that they are following the lawful, competent instructions of the young person that they represent. It is not the direct representative's role to act in a best interests capacity. If the direct representative forms the view that the young person does not have the capacity to provide instructions about a particular matter, the direct representative is unable to continue to represent the young person about that particular matter. The direct representative continues to hold a duty of confidentiality towards the young person in these circumstances.

- Uphold the legislative protections regarding young people giving evidence (refer to CPA s112). It is extremely undesirable to put a young person in the position where they are giving evidence, and the lawyer should consider whether there are other ways to put the evidence before the court, including but not limited to:
    - the child safety officer,
    - subpoena documents,
    - independent records, and
    - a views and wishes report, so that an expert can give evidence about views and wishes instead of the child.

- Avoid interviewing a young person about alleged harms. It is not the young person's role to establish that harm did or did not occur. The lawyer should focus their advocacy on the views and wishes of the young person.

- Be aware of complex family dynamics at play. Lawyers should take care not to do anything that would cause harm to the relationship between the young person and their parents, their carers or their child safety officer:
    - Don't criticise the parents to the young person or behave in a manner that would cause the young person to feel like they have to defend their parents against you.
    - Don't criticise the carers or the child safety officer to the young person or behave in a manner that would make the young person feel like they have to defend their carers or child safety officer against you.
    - Create a "bubble" for the young person to exist in where there is high conflict and parties are looking to weaponise the young person's views against the other parties - make it okay for the young person to not have a view about things.

Lawyers acting as direct representatives must read and be familiar with *Child Safety's principles*:

- Strengthening families, protecting children framework for practice,
- Child Placement principle,
- Safe and together model and
- obligations under the HRA.

Lawyers should be aware of the Charter of Rights for children in care. For more information see LAQ website - for children and young people in care

I3. Letter of Introduction

Once the relevant grant of aid has been approved, forward a letter of introduction to the client to advise they've been granted aid and what it covers, and ask the client to make an appointment for an initial interview with you.

Direct representative

Additionally, direct representatives should contact the young person by telephone if possible, in addition to sending the letter of introduction, and make arrangements to have a face-to-face meeting with the young person.

I4. Initial interview

Party representative

At the initial client interview, lawyers should:

a) arrange a qualified interpreter, if required

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

c) obtain details of any previous advice provided to the client

d) ensure the client has a *Client information sheet*

e) explain the lawyer's role, and the limitations of that role, including limitations to confidentiality

f) explain the client's role

g) obtain any other parties' full details including nature of relationship, their dates of birth and current addresses, and full details of their lawyers if applicable

h) obtain full details of the Child Safety Service Centre involved with the client including details of the relevant OCFOS legal officer, child safety officer and team leader if known

i) determine whether there are currently proceedings before the court, whether the proceedings are in the Childrens Court or the Queensland Civil and Administrative Tribunal (QCAT) and request copies of any documentation relevant to the matter

j) obtain full details of the DCPL legal officers involved with any court proceeding, including details of the relevant applicant and file lawyers if applicable

k) obtain full details of any other participant in the proceeding, e.g. separate representative, Public Guardian child advocate, guardian for an adult party, independent entity for a matter involving an Aboriginal or Torres Strait Islander child or non-party under CPA s 113

l) find out whether there is a current case plan in place in relation to the child/children

m) find out whether there is an upcoming family group meeting, case plan review meeting or court ordered conference

n) obtain information on where the child/children are currently placed and whether there are any alternative placement options. If the child/children are indigenous consider whether the current arrangements and any alternate placement options comply with the Indigenous child placement principle (CPA s 83)

o) find out what the client's position is in relation to the proceedings

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

q) if some or all of Child Safety's protective concerns are accepted, obtain instructions on any actions the client has taken to address the protective concerns

r) if some or all of Child Safety's protective concerns are not accepted, obtain instructions on the client's position regarding Child Safety's allegations

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

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

u) use plain English in all written or verbal communications to. Legalese should be avoided at all times.

Direct representative

When directly representing a young person, it is important to be flexible with arrangements for face to face meetings.

Remember that many young people do not have an independent means of transport, their own means of communication, and their parents and/or carers may not support their decision to seek representation, so the lawyer should consider traveling to the young person instead. It may be necessary to make arrangements to meet at a Child Safety Service Centre.

Remember that most young people attend school during the day, and this should be accommodated when scheduling telephone calls and meetings with them. Consider agreeing on a schedule of contact initiated by the lawyer to ensure that the young person has the ability to speak to the lawyer on a regular basis, for example a call each alternate week at a specific time on a specific day.

Consider who will be at the meeting and how to manage a caregiver or social worker who wants to attend the meeting with the young person.

In the initial client interview, the direct representative should follow the steps outlined in a) to o) above.

It is not appropriate to take instructions from the young person in relation to whether or not Child Safety's protection concerns are accepted or to take detailed instructions about the history of Child Safety's intervention and child protection concerns.

Focus on obtaining sufficient information to properly represent the young person, and do not allow the interview to become side-tracked (one hour should be set aside for the interviews but may be extended if necessary). Be sympathetic to the emotions and concerns that the young person may have and be prepared to divert from the usual process if these emotions or concerns dictate. Use plain English in all written or verbal communications to. Legalese should be avoided at all times.

Young people are parties to proceedings and have the same rights as a parent participant. It is important to ensure that the lawyer does not keep confidences from the young person and the lawyer should not allow other parties to provide information to them that the parties expect to be kept confidential from the young person. The lawyer can only keep information from their client if directed to do so by the court. In this context, direct representatives should take care to consider the following matters when providing information about proceedings to a young person:

- whether the young person will require support during or after the meeting with the lawyer. Be aware of what supports are available to the young person and seek their consent to contact their child safety officer to ensure that appropriate support is arranged if the young person becomes distressed. Practically, this may mean not scheduling appointments for the evening before a weekend where those supports may not be available

- whether there is a need for the young person to have physical copies of any documents in their possession, instead of documents being held by the lawyer and the young person viewing material with the support of their lawyer. The circumstances of each individual young person need to be carefully considered, but it is usually preferable for the lawyer to review the court documents in person with the young person rather than the young person being sent court documents to review on their own and keep in their possession. Having documents in their possession may expose young people to breaches of privacy in relation to others in the placement reading their documents, and depending on the young person, may also have unintended effects on their emotional wellbeing.

Australian Solicitors Conduct Rules relevant to advice

A solicitor must provide clear and timely advice to assist the client to understand the relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of engagement (r 7.1)

A solicitor must inform the client about the alternatives to fully contested adjudication of the case which are reasonably available to the client, unless the solicitor believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the matter (r 7.2).

A solicitor must follow a client's lawful, proper and competent instructions (r 8).

I5. In-house precedent package

In-house lawyers are expected to use the relevant letters and documents contained in the Visual Files precedent package where applicable.

I6. Notice of Address for Service

If there are current proceedings before the court the lawyer should file a *Notice of Address for Service* in the relevant Childrens Court registry (CCR r 21).

The *Notice of Address for Service* should be served on DCPL and all other parties to the proceedings. It is recommended that a copy of the notice be sent to the relevant child safety officers and OCFOS legal officer, so that Child Safety is aware that the lawyer acts for a party and knows how to contact the lawyer for the purpose of invitations to family group meetings and case plan review meetings, and for any temporary order applications which may arise.

Grant of aid confirmation should be provided to the applicant and all other parties to the proceedings in line with LAQ Act s 28. This is an ongoing responsibility where parties to proceedings change.

If at any stage in proceedings a lawyer is refused a grant of legal aid to continue to represent their client, they should immediately notify the court, the applicant and the other parties in writing confirming that they have a need to withdraw from the matter and seeking leave of the court to do so without an appearance. If leave to withdraw from the matter is not granted on the papers, the lawyer should attend the next court event and seek leave to withdraw from the matter. Instructions should be taken from the client to provide all other parties to the proceedings, the client's current contact details (address, telephone number, e-mail address) for the purposes of future communication about the proceedings.

If at any stage in proceedings a lawyer needs to withdraw from a matter for any other reason, they should immediately notify the court, the applicant and the other parties in writing, confirming that they have a need to withdraw from the matter and seeking leave of the court to do so without the need for an appearance. If leave to withdraw is not granted on the papers, the lawyer should attend the next court event and seek leave to withdraw from the matter. Instructions should be taken from the client to provide all other parties to the proceedings, the client's current contact details (address, telephone number, e-mail address) for the purposes of future communication about the proceedings.

I7. Dealing with DCPL, OCFOS and/or Child Safety

The State of Queensland is represented in proceedings under the CPA by:

a) OCFOS for an application for a temporary custody order, a temporary assessment order or a court assessment order, and
b) DCPL for an application for a child protection order.

Child Safety assess the level of intervention required and consult with OCFOS and/or DCPL to make recommendations about the type and length of order that is sufficient to meet the child's protective needs. When child protection proceedings commence Child Safety staff become witnesses to the proceedings and will contribute their child protection expertise to negotiations, evidence gathering, and the provision of oral evidence as required. Child Safety are responsible for case management and will undertake tasks associated with this, including, developing and reviewing case plans and making other decisions that are relevant to the proceedings (e.g. placement and contact arrangements for a child).

Communications with DCPL, OCFOS and/or Child Safety must take the same form as with any other party to the proceedings. Take particular care to accurately record the details of any conversations with DCPL and OCFOS legal officers, and child safety officers. Where possible, consider confirming conversations with DCPL and OCFOS legal officers, and child safety officers in writing.

Remember that the DCPL is obligated to make independent decisions regarding their application which may conflict with the views of child safety officers.

Be mindful of the crossover between the case work responsibilities of Child Safety and litigation role of the DCPL. Consider who has responsibility for decision-making in relation to the particular issue.

I8. Dealing with unrepresented parties

Communications with an unrepresented party must take the same form as with another lawyer. Take particular care to accurately record the details of any conversations with the unrepresented party. Consider sending a letter to the party confirming the details of the conversation.

Use plain English at all times when communicating with unrepresented parties.

Lawyers should refer to the *QLS and LawRight Self-represented litigants: Guidelines for solicitors*. Also see QLS *Guidance Statement No. 9 – Dealing with Self-represented Litigants.*

Other parties involved in the proceedings should be advised of, and if communication is in writing included in, any direct communications with a self-represented litigant.

If an unrepresented party seeks guidance in relation to the court proceedings, the party should be advised to obtain independent legal advice.

I9. Family group meetings and case plan review meetings

CPA s 51L outlines parents may have a support person attend and participate in a family group meeting (FGM) on their behalf and legal representatives can act in this role.

The case plan will be reviewed at least every six months in accordance with CPA s 51V (4).

Reviews will occur as a case plan review meeting (CPRM) rather than an FGM and is usually convened by the child safety officer and team leader.

The convenor must give the parent and their support person a reasonable opportunity to attend and participate in an FGM or a CPRM being convened to develop a case plan for the child.

Subject to a grant of aid, the lawyer must attend the FGM and CPRM convened by Child Safety or the Family Participation Program (FPP) during the term of the matter in person.

The lawyer should tell the client they can make an application for legal aid to attend the FGM or CPRM with the client, and the lawyer should encourage the client to advise them of any FGM or CPRM organised by Child Safety.

FGMs and CPRMs seek to provide family-based responses to children's protection and care needs, and to ensure an inclusive process for planning and making decisions about the children's wellbeing and protection and care needs.

Be aware that matters discussed at FGMs are admissible in any court proceedings except in a criminal proceeding, CPA s 51YA.

Focus on developing an appropriate case plan which meets the child's assessed protection and care needs, which may include a goal or goals to be achieved by implementing the plan, for example:

- arrangements about where or with whom the child will live, including interim arrangements,
- services to be provided to meet the child's protection and care needs and promote the child's future wellbeing,
- outline matters Child Safety will be responsible for including particular support or services to be given to the child, the client, and the child's family to allow the child to return to the client or someone else within their family if the return is in the child's best interests,
- the child's contact with the client and the child's family group or other people the children are connected to,
- arrangements for maintaining the child's ethnic and cultural identity,
- outline matters the client or the child's carer will be responsible for, and
- a proposed plan review date.

The case plan should also reflect the client's capacity to engage with support, therapeutic or other services.

If a lawyer or their client does not agree with case plan goal/s, outcomes or Child Safety's proposed actions, make sure this is noted in the case plan.

Make sure the goal/s and outcomes listed in the case plan are achievable by the client, and includes some clearly defined mechanism to measure the client's progress in achieving the case plan goal/s. For example, instead of saying the client will submit to drug testing, include descriptive actions such as how the request will be made for the client to submit to drug testing (in writing/in person/via phone), where the test occur and who will pay for it, who gets the results, and how success will be measured eg five clear drug tests in a three-month period.

Where a case plan has been reviewed, draw Child Safety's attention to their obligation under CPA s 51X to file a copy of the review report along with the revised case plan, and request the review report include the client's achieved goals relating to the outcomes.

Direct representative

Direct representatives should ensure that they have met with the young person prior to the FGM or CPRM to provide legal advice, as well as advice about the young person's participation options.

This meeting should occur far enough in advance that the young person has enough time to consider what views and wishes they want to express as part of this process.

Direct representatives should ensure that the young person has the opportunity to participate meaningfully in the development and revision of their case plan.

I10. Prior to each court event

Prior to each court event the lawyer must:

1. Obtain an appropriate grant of aid to attend,
2. Consider whether the matter could be resolved prior to the court event. Note that child protection is not a consent jurisdiction and the burden is on the applicant, however the lawyer should give the client realistic advice about the prospects of success,
3. Obtain all relevant documentation from the client, and the applicant, where applicable,
4. Consider any necessary adjournment,
5. Consider whether or not interim orders might be made on an adjournment, including whether it is necessary to grant temporary custody to the chief executive or other suitable person in the circumstances,
6. Consider the current case plan/s and assess its appropriateness, and
7. Where necessary seek leave to attend a court event by telephone or other electronic means or engage and appropriately brief an agent to conduct the court event on the client's behalf in the event that the lawyer who has carriage of the client's matter is unavailable to appear.

Direct representative

Direct representatives must take instructions from the young person about how they want to participate, and provide them with the options that are available to them, including but not limited to:

1. attending at court in person for the mention
2. meeting with the magistrate to provide views and wishes
3. not attending court and being advised of the outcome of the mention afterwards
4. or any combination of these.

If the young person wants to attend the court, ensure that the child safety officer is aware of this and makes arrangements for the young person to be transported. It is not appropriate for the young person to be responsible for arranging their own transport to court. It may be necessary to have a direction made for Child Safety to transport or arrange appropriate transport for the young person's attendance.

Young people's meetings with the presiding magistrate may occur on the same day as the mention, or on a different day.

The direct representative should provide notice to the court that the young person wants to meet with the magistrate as far in advance of the mention as possible. The registrar will ordinarily advise the parties what arrangements will be made for the meeting, for example that the magistrate will meet the young person before starting the general list, and who else the magistrate will allow to be present at the meeting.

It will assist the court if the direct representative advises in the notice who the young person wishes to be present for the meeting. Ordinarily, persons present are limited to the young person, their direct representative, the magistrate, and the separate representative. Note that these meetings are still recorded by the courtroom recording equipment.

I11. Attending mentions

The lawyer should attend all court events of the matter in accordance with the grant of aid.

If the lawyer cannot physically attend because the court is in a remote area or they have other court commitments, the lawyer should, at least seven working days prior to the court event, make arrangements to seek leave from the court to appear at the court event by telephone or other electronic means.

If the leave sought is not granted or otherwise not possible, and the lawyer who has carriage of the matter is unable to appear, the lawyer must, at least three working days prior to the court event, engage and appropriately brief an agent to conduct the court event on the client's behalf.

Any agency requests to an in-house lawyer must be made in writing to the relevant lawyer or team at least three business days prior to the court event and must contain details of all parties and children (including dates of birth) involved in the proceedings so that a conflict check can be conducted. Instructions must not be sent to an in-house lawyer until the agency request has been accepted.

Lawyers should not send correspondence or other communications to the court requesting that the court make arrangements for a child protection duty lawyer to appear as an agent in relation to matters where a client has a grant of legal aid or is privately funded. This is inappropriate.

I12. Where there are allegations of domestic and family violence

When hearing a child protection proceeding, a Childrens Court may make or vary a protection order against a parent (DV Act s 43).

A Childrens Court can make the order of its own initiative or on a party's application, including a separate representative. If an order is sought in the child protection proceedings but an existing protection order is already in force against a parent of a child, the court must consider whether the existing protection order needs to be varied, given the child protection circumstances. DVA s 43 outlines the process the court must use. Also see CCR r 70.

Consider any allegations of domestic or family violence in the proceedings or any protection orders already in force, and whether an application for a protection order is better pursued in the Childrens Court or through a Magistrates Court (see Part G – Acting in domestic violence matters).

If there are security or safety issues, it may be wise to meet the client at the office and accompany them to relevant court events. In extreme cases the court staff and police should be informed of any concerns.

I13. Applications for adjournments

From time to time a lawyer may need to request a matter's adjournment. Only apply for an adjournment if it is necessary for the efficient conduct of the case. Be mindful that child protection matters should be dealt with as quickly as possible in the best interests of the child (CPA s 63)

If the lawyer intends to request an adjournment, notify all parties of this intention and the reasons why the adjournment is being sought.

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

When considering an adjournment application, the lawyer must consider whether the child/ren's protection needs to be secured during the adjournment period and whether an interim order is necessary to ensure the child/ren's safety. The lawyer must consider whether the child/ren would be at an unacceptable risk of suffering harm if interim orders were not made.

If additional material is available support the client's position, the lawyer should ensure this material is placed before the court via an affidavit and ensure the affidavit material is filed and served on all parties prior to the mention date. Note that CCR requires that documents must be served at least three business days before a court event if that document is intended to be relied upon.

The lawyer should also consider CPA ss 66–67, 68 and whether to make an application for orders:

- regarding things the court could direct the parties to do during the adjournment
- restricting a parent's contact with the child
- authorising a departmental officer to have contact with the child
- requiring a social assessment report about the child and the child's family be prepared and filed in court, ensuring that any proposed social assessment report writer is appropriately experienced and qualified as per the *Australian Standards of Practice for Family Assessments and Reporting*
- authorising a medical examination or treatment of the child and requiring the subsequent examination or treatment report be filed in the court
- regarding the child's contact with their family during the adjournment period
- requiring the chief executive to convene a family group meeting to develop or revise a case plan and file the plan in the court; or to consider, make recommendations about, or otherwise deal with another matter relating to the child's wellbeing and protection and care needs
- to hold a conference between the parties to decide the matter in dispute or to try to resolve the matters before the proceeding continues
- for a protection order.

Consider seeking an order to appoint a separate representative if the facts of the case warrant such an order, particularly if the matter will be contested or if DCPL is applying for a long-term guardianship order or a permanent care order. The role and responsibilities of the separate representative must be explained to the client.

Prior to the mention date, the lawyer must contact the relevant court to determine the applicable practices and procedures in that registry, for example in some places where Childrens Courts are constituted the magistrate will require legal representatives to remain seated throughout any appearance.

The lawyer should arrive early at court on the mention date. Advise the court on the material intended to be relied on to support any application for interim orders or for interim orders to be discharged. The court may ask for the submissions that support the lawyer's position. Make reference to relevant CPA sections and CCR.

When considering submissions, consider the relevant principles stated in CPA ss 5–5E.

The child's safety, wellbeing and best interests, both through childhood and for the rest of the child's life is the paramount principle when administering CPA (s 5A).

CPA s 5B sets out a series of 13 general principles for ensuring the safety, wellbeing and best interests of a child, s 5BA sets out principles for achieving permanency for a child and s 5C sets out additional principles for Aboriginal or Torres Strait Islander children. The lawyer must also consider the CPA s 9 ('what is harm') and s 10 ('who is a child in need of protection'), and any other relevant sections.

After each mention the lawyer must advise their client of the outcome in writing and outline the client's rights and obligations resulting from any court orders made. Consider and provide advice on any possible review or appeal of the decision. Confirm this advice in writing to the client and advise the next court date and the client's need to attend. Provide the client with a sealed copy of any orders made in due course.

The lawyer should ensure they receive copies of every order from the relevant registry, the relevant Child Safety Service Centre via OCFOS (when temporary custody and/or assessment orders have been made) or DCPL and place these orders on the file.

Australian Solicitors Conduct Rules relevant to mentions and interim hearings

A solicitor representing a client in a matter that is before the court must not act as the mere mouthpiece of the client and must exercise the forensic judgements called for during the case independently and after consideration of the client's instructions where applicable (r 17.1 and see exception in r 17.2).

A solicitor must not make submissions or express views to a court on any material evidence or issue in the case in terms which convey or appear to convey the solicitor's personal opinion on the merits of that evidence or issue (r 17.3).

A solicitor must not, in the presence of any of the parties or solicitors, deal with a court on terms of informal personal familiarity which may reasonably give the appearance that the solicitor has special favour with the court (r 18.1).

A solicitor must not deceive or knowingly or recklessly mislead the court and must take all necessary steps to correct any misleading statements made by the solicitor to a court as soon as possible after the solicitor becomes aware that the statement was misleading (rr 19.1–19.2).

A solicitor seeking any interlocutory relief in an ex parte application must disclose to the court all factual or legal matters which are within their knowledge and are not protected by privilege and that the solicitor has reasonable grounds to believe would support an argument against granting relief or limiting its terms adversely to the client (r 19.4).

A solicitor must, at the appropriate time in the hearing of a case if the court has not yet been informed of that matter, inform the court of any binding authority, where there is no binding authority, any authority decided by an Australian appellate court and any applicable legislation known to the solicitor and which the solicitor has reasonable grounds to believe to be directly on point, against the client's case (rr 19.6, 19.8).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

A solicitor must not, outside an ex parte application or a hearing of which an opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless the court has first communicated with the solicitor…or the opponent has consented beforehand…a solicitor must promptly tell the opponent what passes between the solicitor and a court in a communication… (rr 22.5–22.6).

A solicitor must take steps to inform the opponent as soon as possible after the solicitor has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, of that fact and the grounds of the application, and must try, with the opponent's consent, to inform the court of that application promptly (r 22.8).

I14. Consents and instructions

There is no provision in the CPA for orders to be made by consent.

The burden of proof lies with the applicant and the Magistrate must be satisfied on the evidence that the factors outlined in CPA s 59 have been met.

If the client makes a decision to not oppose the application for the child protection order, obtain the client's signed, dated and witnessed instructions confirming:

- Their decision to not oppose the application;
- Their understanding that the time period for the order will take effect from the date it is made on a final basis by the court; and
- Their understanding of the findings the court is likely to make and that they do not oppose the application.

Where seeking that the client sign written instructions, solicitors should be aware of their client's level of capacity and modify the written instructions accordingly (e.g. by simplifying the language or drafting 'tick a box' options for the client).

Parent representatives and direct representatives should provide written advice to the client at each stage of the proceedings, including information about the client's options and rights generally. If practicable, signed, dated and witnessed instructions should be obtained at each stage of the proceedings. If this cannot occur, then where possible confirmation of the client's instructions in writing should be obtained (eg via email) or confirmed in writing (via the client signing a copy of their letter of advice).

I15. Disclosure/Issuing of subpoenas

Disclosure

The purpose of disclosure is to ensure that the parties are fully informed with all documents relevant to the proceeding (see CPA s 189C – 193; CCR Part 6, r 50 – 61; Director Child Protection Litigation – Directors Guidelines Part 4 Duty of Disclosure)

DCPL's duty of disclosure is a proactive and ongoing duty that continues until the proceedings is decided.

DCPL is required to file and serve a disclosure form on the parties within 20 business days of the first mention in a proceeding (see CCR r 52; Director Child Protection Litigation – Directors Guidelines Form D – Disclosure Form).

The disclosure form is given in accordance with the DCPL's duty to disclose documents under CPA s 189C and lists the classes of document relevant to the proceeding that are usually in the possession or control of Child Safety, which include:

- information received by Child Safety where it is suspected a child has been, is being, or is likely to be harmed including:
    - notifications (subject to CPA s 186); and
    - child concern reports;
- assessments about whether the child is a child in need of protection including investigation and assessment outcomes and attached documents;
    - records of interview;
    - structured decision-making assessments including:
        - safety assessments;
        - family risk evaluations and family risk re-evaluations; and
        - reunifications assessments;
- assessments of the child's strengths and needs;
- assessments of a parent's strengths and needs;
- case plans and associated review reports (see CPA s 51X);
- referrals from Child Safety to another agency;
- information received by Child Safety about the child or their parents from another agency;
- referrals and minutes from Suspected Child Abuse and Neglect Team meetings, Domestic Violence Collaborative Agency Meetings and carer agency meetings;
- about the child prepared by an external reporter or assessor;
- reports about a parent prepared by an external reporter or assessor;
- case notes made by Child Safety, for example, about a child's contact with a parent or a Child Safety visit to a parent;
- child protection history report(s);
- criminal, domestic violence, or traffic history of any person relevant to the proceeding;
- cultural support plans; and
- correspondence between Child Safety and a parent, including reviewable decision letters
- standards of care (SOC) reviews or memorandum of care (MOC) documents

However, if a lawyer becomes aware that DCPL or Child Safety may have other documents in their possession or control that are relevant to a client's case, disclosure of these documents should be requested (see CCR r 53).

Requests for disclosure of a document or documents by a party should be in writing and may be made using the Director of Child Protection Litigation - Directors Guidelines Form E – Request for Disclosure Form.

Requests for disclosure should be as specific as possible when describing the documents required, so that DCPL can locate the documents and organise the best way for access to documents be provided. DCPL asks that requests for disclosure be made on

Information that can help DCPL locate documents includes:

- Who the document is about?
- By general reference, the circumstances to which the documents relate and how the circumstances are relevant to the proceeding
- The date of the document or the time period to which the period relates (see CPA s 190).

If a request for disclosure of a document is made, DPCL must give access to the document unless DCPL is permitted to refuse access under CPA s191(2). If DCPL is of the view that disclosure of a document should be refused, DCPL must advise of the refusal and explain the reason/s why access to the document is being refused.

If DCPL refuse to give access to a document under CPA s 191(2), the DCPL is not required to disclose the document unless the Childrens Court orders disclosure. An application can be made under CPA s 191(4) to ask the Childrens Court to order DCPL to make disclosure. If the Childrens Court orders disclosure, the disclosure is on terms ordered by the Childrens Court. (see CCR r 54).

Lawyers can indicate to DCPL their preferred method of accessing documents when completing the request for disclosure form. For example, DCPL may be requested to post the documents or send them by email (if an electronic copy of the document is available). DCPL will consider requests but it is ultimately up to DCPL as to how access to the documents will be given. For example, if a request is made for a large number of documents, DCPL may ask that lawyers attend an office to inspect the documents instead and take copies of the documents that are required.

Lawyers should ensure that they have received disclosure of all relevant documents before key events in the litigation such as a court ordered conference or trial.

DCPL must provide written notice to the court that the duty of disclosure has been complied with. DCPL should file and serve the notice on the parties prior to seeking a final determination of an application. Until the written notice has been filed, the court cannot decide the proceeding. (see CCR r 26 & 61; see Director of Child Protection Litigation – Directors Guidelines Form F - Disclosure Compliance Notice Form).

I16. Court ordered conference

The purpose of the court ordered conference is to decide the matters in dispute and to try to resolve them. The lawyer must attend the court ordered conference, subject to a grant of legal aid being available, and they must attend in person. The client may also have a support person in attendance at the discretion of the conference convenor.

DCPL's duty of disclosure is a proactive duty (see CPA s 189C – 193, CCR Part 6, r 50 - 61). The lawyer should ensure that disclosure of all relevant documents has occurred before the court ordered conference.

At the court ordered conference, the lawyer must advise the parties of any settlement prospects and assist making recommendations for the future conduct of the case.

At the conclusion of the conference, the convener will prepare a written report that is filed in court and provided to the parties, containing the conference outcome including whether an agreement has been reached, and the order/s sought by the parties.

Communications at a court ordered conference are confidential and cannot be used in any court proceedings unless all parties provide consent. If a lawyer wishes to advise the court of the court ordered conference communications, they must first obtain the parties' consent.

If the applicant files subsequent material containing court ordered conference communications, make representations to the applicant to withdraw the affidavit material. If the material is not withdrawn, the lawyer should make an application to the court to disregard that material.

Direct representative

Direct representatives should obtain instructions from the young person about whether they want to attend in person, or if they prefer to participate in another way. Be mindful that the other parties may find the participation of the young person confronting and may seek to limit the young person's participation. This should be proactively managed by:

- Giving parties and the Child Protection Conferencing Unit (CPCU) as much notice as possible of the young person's participation.
- Resisting attempts by the other parties and the convenors to limit the young person's participation – it is not appropriate that the young person is allocated a separate room by themselves while the other parties participate in the same room together, or that the young person's participation is limited to views and wishes only.
- Developing a plan in consultation with the young person, and any support people if the young person consents, about how the young person will be supported before, during and after the conference.

I17. Mention following the court ordered conference

The matter will be mentioned again after a court ordered conference. If an agreement has been reached, the parties can ask the court to make the order/s at this mention.

CPA s 105 outlines the court is not bound by the rules of evidence but may inform itself in any way it thinks appropriate. The burden of proof required by the court is on the balance of probabilities. The *Child Protection Bill 1998* (Qld) explanatory notes of state:

> 'The court is inquisitorial and may use whatever means it wishes to inform itself. For example, the court may accept a submission from interested family members or may ask to speak to the child in the magistrate's office.'

If no agreement has been reached between the parties and the matter is proceeding to a contested hearing, the lawyer should use this mention to obtain directions on the steps that need to be taken to prepare the matter for trial.

In preparing for the mention the lawyer must:

- write a letter to the client to inform them of the mention date, request their attendance and explain the relevance of this court event
- prepare a trial plan — what are the issues and what are the client's instructions? What evidence is needed to support their position? How long will it take to prepare for trial?
- review the current case plan with the client and assess what evidence is needed to support the client's case and how to get that evidence before the court
- find out whether Child Safety has filed the case plan, the plan review date and whether it will still be current at the time of the trial or whether it will need to be reviewed
- consider whether the matter is ready to proceed to trial
- consider the likely number of witnesses and trial length— include time assessment for opening statements, need for further evidence in chief, cross-examination, re-examination and submissions
- the need for expert witnesses and a social assessment report or an existing report update
- consider whether it is necessary to seek directions for disclosure (CCR r 58). Consider whether it is necessary to issue a subpoena for the production of Child Safety's file. Consider what other subpoenas may need to be issued
- confirm counsel's availability to be briefed, subject to aid being granted
- propose options for settlement
- if the matter cannot be resolved request it be set down for trial along with filing directions
- consider whether the matter is complex and should be listed before the specialist Brisbane Childrens Court magistrate.

At the mention, the lawyer must seek directions for matter preparation and filing dates for each party. The lawyer should seek a direction that the applicant file its material first, followed by any separate representative. Make sure sufficient time is allowed for the client to file their material in response. See *Suggested trial directions — Childrens Court* (Annexure B)

Direct representative

Direct representatives should resist filing affidavit material; however, it is appropriate to file submissions about the participation of the young person in the hearing at this stage. The lawyer should provide advice and take instructions about how the young person wants to participate and seek directions to facilitate this, e.g. that the young person may leave the courtroom for regular breaks during the conduct of the hearing.

Immediately after the mention, seek aid on behalf of the client to prepare for trial and for trial attendance. Seek aid for counsel in complex matters.

I18. Advise client of trial dates/arrangements for trial

Once a trial date has been obtained, write to the client advising of the trial dates and also provide details of the timetable for filing material, explaining any filing dates they must comply with.

Advise the client they and any witnesses will need to attend court and prepare affidavits.

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

Check the client understands the trial process including procedures for giving evidence and cross examination.

Direct representative

Direct representatives should ensure that arrangements have been made for the young person to be transported to the hearing if they want to attend, and it is advisable to confirm this with Child Safety so that there is a clear understanding of who will do what to ensure that the young person is able to participate.

I19. Preparation for trial

When preparing for trial, the lawyer should:

- ensure an updated grant of aid is available
- inform the client in writing of the trial dates, confirming their need to attend along with their witnesses and steps taken in preparation for trial
- if a counsel grant of aid has been approved, confirm counsel for the trial in writing setting out trial dates and fees payable in line with LAQ's *Scale of Fees*
- ensure DCPL have complied with their disclosure obligation prior to trial. Consider whether it is necessary to subpoena for the production of Child Safety's file
- issue subpoenas — together with conduct monies, and provide notice to all parties
- inspect any material returned under subpoena on behalf of the other parties
- consider requesting copies of any protection order application/s or order/s from the relevant Magistrates Court registry
- consider asking the court to make or vary a protection order on behalf of the client, and whether the child/ren should be named on the order
- inform witnesses of trial dates and ensure they have a copy of their affidavits of evidence, their availability to give evidence, and arrange their cross-examination attendance times to minimise waiting time
- arrange a qualified interpreter, if required

- prepare affidavit objections and documents to be tendered
- advise the applicant and other parties which of their witnesses will be required for cross examination
- liaise with the applicant and other parties/their lawyers for preparation and filing in line with to court directions
- consider whether the matter can be appropriately dealt with by submissions (eg if harm is admitted and the appropriate type of order has been agreed, the only issue in dispute is the length of the order or the appropriateness of the case plan which could be dealt with by submissions).

The lawyer should shield the client from any unnecessary conflict. Allow for sufficient time to confer with the client, the applicant and other parties about arising issues prior to trial.

Consider negotiating with the applicant or other lawyers as this may result in either a resolution of the proceedings or a narrowing of the issues at trial. Explain the negotiations to the client at all times and ensure the client's position is not compromised in any way. The lawyer must seek instructions before agreeing to any proposed orders.

I20. Evidence and witnesses

Where a matter is contested and listed for hearing, the lawyer will need to consider each affidavit and exhibit to be relied on at the hearing and give appropriate notice if a person is required to attend the court for cross-examination. In addition to child safety officers and the parent/s, consider any health practitioners that have undertaken any examinations, assessments, or treatment, any counsellors engaged in a therapeutic role, police officers that have provided statements or information and any other experts that have been engaged and produced reports. Also consider any material filed in any previous proceedings, any protection orders and obtain affidavits from witnesses to support the client's application.

Witnesses will need to be organised well in advance. When calling a witness, attempt to provide their evidence to the court via affidavit material filed and served on the parties.

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

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

If the client is seeking an alternative child protection order to what the applicant seeks, develop an appropriate case plan which reflects the order sought by the client.

The lawyer should consider whether copies of documents from Child Safety's file is required for trial. Documents may include copies of observation notes about parent/child contact, correspondence with and other communications with support workers and other professionals who Child Safety has engaged to work with the family and correspondence and other communications that Child Safety has had with any expert report writers who have been commissioned by Child Safety to prepare reports.

If the lawyer considers that documents are required from Child Safety's files, information can be requested via the disclosure form, or it can be subpoenaed. Care should be taken when issuing subpoenas that this may expose sensitive information about one or more parties to all parties and potential CPA s113 non-parties in the proceedings.

Direct representative

Be aware of CPA ss 99V, 99W and 112 which provide that children cannot be compelled to give evidence, and the limited circumstances in which children may be permitted to give evidence (also see CCR r 81 and 102).

I21. Briefing counsel

LAQ's Grants Handbook notes that counsel may be briefed to appear for complex matters.

Upon aid for trial and to brief counsel being granted, the lawyer should retain and brief counsel as soon as practicable.

The brief to counsel must include all relevant filed court documentation; copies of any subpoenaed material available properly indexed (or summary if necessary, though copies of material should be sought if the matter is progressing to a trial); copies of relevant diary notes, correspondence and other documentation.

All briefs to counsel are marked "Legal Aid Brief". Where appropriate, a pro-forma invoice is to be forwarded to counsel with the brief.

"Instructions to counsel" in the brief should set out the trial dates and court in which the proceedings are listed for hearing, the basic outline of the case to be determined, list the witnesses to be called by each party and a statement as to the relevance of that evidence, and confirmation of fees payable pursuant to Legal Aid *Scale of Fees*. If there are any particular issues in the case that should be brought to counsel's attention, they should be clearly spelt out in counsel's instructions.

Any counsel briefed in a legal aid matter accepts the brief on the basis that they will be paid at legal aid rates which are set out in the LAQ *Scale of Fees* unless otherwise provided. The lawyer should ensure that only barristers of suitable experience in the particular jurisdiction are to be briefed and only barristers who are members of the Bar Association of Queensland are briefed.

I22. Conference with counsel

The lawyer should arrange a conference with counsel and the client as early as practicable prior to the first day of trial.

If the trial is part heard, a further conference with counsel and the client should be arranged prior to the first day of the resumed trial.

I23. Attend trial and instruct counsel

CPA s 105 notes the Childrens Court is not bound by the rules of evidence but may inform itself in any way it thinks appropriate. The balance of probabilities is the burden of proof required for any matter before the court is. The court will normally follow the usual course of litigation. The lawyer should ensure that the applicant presents its case first and ensure objections to evidence are made in the usual way and in accordance with the accepted rules of evidence during the proceedings. The magistrate can then indicate when the rules are to be dispensed with.

A lawyer should ensure all required witnesses are available for giving evidence and arrange times for their attendance for cross examination purposes and to minimise waiting time.

The lawyer should take accurate records of the proceedings including witness names, a sufficient summary of the evidence given, and directions or orders made by the court during the course of the hearing. A 'List of exhibits' should also be maintained throughout the trial.

It is recommended that during the course of the trial an adequate summary of questions and answers should be maintained by the instructing solicitor. As an instructing solicitor, a lawyer should be taking careful note of the evidence to assist counsel with their cross-examination and submissions. A full file note should be kept on the file confirming what occurs on each day of the trial. Handwritten notes from the trial should be placed on the file.

At the conclusion of the trial the lawyer must write to the client informing them of the outcome and provide sealed copies of orders made or advise the expected judgment date if known. The client should also be informed of their obligations under the orders and their right of appeal.

Australian Solicitor Conduct Rules relevant to trials

A solicitor must alert the opponent and if necessary inform the court if any express concession made in the course of a trial in civil proceedings by the opponent about evidence, case-law or legislation is to the knowledge of the solicitor contrary to the true position and is believed by the solicitor to have been made by mistake (r 19.12).

A solicitor who, as a result of information provided by the client or a witness called on behalf of the client, learns during a hearing or after judgment or the decision is reserved and while it remains pending, that the client or a witness called on behalf of the client has…lied…falsified a document…suppressed …material evidence upon a topic where there is a positive duty to make a disclosure…must advise the client that the court should be informed of the lie, falsification or suppression and request authority so to inform the court; and refuse to take any further part in the case unless the client authorises the solicitor to inform the court of the lie, falsification or suppression and must promptly inform the court of the lie, falsification or suppression upon the client authorising the solicitor to do so but otherwise may not inform the court of the lie, falsification or suppression (r 20.1).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

…in proceedings in which an allegation of sexual assault, indecent assault or the commission of an act of indecency is made and in which the alleged victim gives evidence, a solicitor must not ask that witness a question or pursue a line of questioning of that witness which is intended to mislead or confuse the witness or ...be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive and …must take into account any particular vulnerability of the witness in the manner and tone of the questions that the solicitor asks (r 21.8).

A solicitor whose client informs the solicitor that the client intends to disobey a court's order must: advise the client against that course and warn the client of its dangers; not advise the client how to carry out or conceal that course; and not inform the court or the opponent of the client's intention unless: the client has authorised the solicitor to do so beforehand; or the solicitor believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety (r 20.3).

A solicitor must not take any step to prevent or discourage a prospective witness or a witness from conferring with an opponent or being interviewed by or on behalf of any other person involved in proceedings (r 23).

A solicitor must not advise or suggest to a witness that false or misleading evidence should be given nor condone another person doing so; or coach a witness by advising what answers the witness should give to questions which might be asked (r 24).

A solicitor must not confer with more than one lay witness (including a party or client) at the same time about any issue which there are reasonable grounds for the solicitor to believe may be contentious at a hearing and where (it) would affect evidence to be given by any of those witnesses unless …(there are) reasonable grounds (r 25).

A solicitor must not confer with any witness (including a party or client) called by the solicitor on any matter related to the proceedings while that witness remains under cross-examination (with some "special circumstance" exceptions) (r 26).

In a case in which it is known, or becomes apparent, that a solicitor will be required to give evidence material to the determination of contested issues before the court, the solicitor may not appear as advocate for the client in the hearing (r 27.1).

A solicitor must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or the administration of justice (r 28).

I24. Appeal

The lawyer should consider merit in every case and determine whether grounds of appeal exist, and whether an appeal should be lodged.

If the lawyer thinks an appeal should be lodged, they must discuss this option with the client including:

- the appeal timeframe
- risk of a less favourable outcome
- effect of appeal on the execution of order.

All time limits must be observed.

In-house lawyers must consult with their principal lawyer and the Family Law and Civil Justice Services director about the merits of any appeal before making an application for aid to appeal.

If a decision is reached that there is merit in an appeal, the lawyer should apply for relevant grants of aid to file an appeal.

The application for aid should contain sufficient information to allow the merits of any appeal to be assessed by LAQ Grants. The application for aid should also provide advice as to relevant time limits so that a decision about aid can be made prior to the appeal period lapsing.

If a grant of aid is approved to file an appeal, the lawyer should complete and file a *Notice of Appeal* to initiate the appeal process.

I25. Client care at the conclusion of the matter

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

Where a child protection order has been made, advise the client and confirm in writing their rights concerning QCAT proceedings. The lawyer should also indicate which decisions are open to review in that forum:

- a refusal to review a case plan after a child or their long-term guardian has asked Child Safety to review the child's case plan (CPA s 51VA or 51VB)
- decisions regarding a supervision matter stated in a child protection order (CPA s 78)
- refusing to deal with a complaint about a permanent guardian (CPA s 80D (1))
- decisions about placement of the child (CPA s 86(2))
- a decision to withhold information from the parents about the child (CPA s 86(4))
- restrictions on contact between the child and their parent, or a member of the child's family (CPA s 87(2)).

The lawyer must also inform the client of their right to apply to revoke or vary the child protection order/s made should their circumstances or the circumstances of their child/children change in the future.

If at any stage in proceedings a lawyer is refused a grant of legal aid to continue to represent their client, they should immediately notify the court, the applicant and the other parties and confirm that they are withdrawing from the matter.

The lawyer should ensure all accounts are finalised in a timely manner at the conclusion of the matter.

Lawyers should notify LAQ of the outcome after each grant of aid completion and when submitting their final account for payment and file finalisation. In-house staff will not be able to finalise a file unless a report has been submitted to LAQ Grants on the outcome of each grant of aid.

In-house lawyers should refer to the *File management standards – litigation support officers* to be aware of their responsibilities in closing a file.

Part J – Acting as a child protection duty lawyer

J1. Child protection duty lawyer services

LAQ's child protection duty lawyer services offer free legal information and initial legal advice for people who are parties to an application/s in the Childrens Court of Queensland at select locations for:

1. temporary assessment order,
2. court assessment order,
3. temporary custody order,
4. child protection order, or
5. an application to vary or revoke a child protection order.

The duty lawyer should be aware of the requirements outlined in Part I1 – Clients involved with the child protection system and their needs

J2. Scope of service

The duty lawyer service is for unrepresented parties, including a child or young person the subject of an application, who are to appear in court on the day and non-parties who would like to make an application to appear and make submissions in court on the day.

The duty lawyer should, ideally, spend no more than 70 minutes with each client.

If there are no clients to assist as duty lawyer, the maximum time that can be charged to LAQ is 60 minutes.

The duty lawyer is to:

1. explain the law related to the client's child protection matter and advise the client of the available options in language which is clear and avoids legal jargon
2. assist with applications for legal aid
3. provide relevant factsheets to the client and assist with referrals to appropriate support services
4. if appropriate, assist with negotiations and may assist with applying for an adjournment and with short or procedural mentions.

J3. The duty lawyer

A duty lawyer must have personally completed the child protection duty lawyer training provided by Legal Aid Queensland.

Lawyers should be familiar with the CPA, CCA, CCR, DCPLA, *Director of Child Protection Litigation – Director's Guidelines*, *Child Safety Practice Manual* and the HRA.

Lawyers should also consult the online *Childrens Court Child Protection Proceedings Benchbook* which is online.

J4. Arrival

A duty lawyer must arrive at least 30 minutes prior to commencement of court to begin seeing prospective clients, take instructions and provide advice.

J5. Preparation

There should be a room allocated for the duty lawyer to speak with clients. A duty lawyer should consult the court list (if available), court staff, or the relevant OCFOS or DCPL legal officer. A duty lawyer should have access to:

1. a supply of *Child protection duty lawyer forms* and *Child protection duty lawyer session reports*
2. relevant legislation - CPA, CCA, CCR and DV Act
3. legal aid application forms, and
4. relevant LAQ publications and factsheets, which can be ordered from the LAQ website.

Conflict check prior to taking instructions and advising.

J6. Intake

Where there are two or more unrepresented parties seeking duty lawyer assistance, priority is to be given in the following order:

a. a child or young person the subject of the proceedings

b. parties to the proceeding

c. non-parties.

Where the duty lawyer identifies a conflict:

a. an attempt should be made to refer the person seeking assistance to a LAQ preferred supplier on the Child Protection Civil Law Panel for advice in person

b. if no lawyer is available in person, an attempt should be made to refer the person seeking assistance to a community legal centre for advice via telephone or the client can be referred to LAQ so that a conflict legal advice letter can be provided to the client.

If a client does not have copies of the relevant filed material, the duty lawyer should request that the relevant OCFOS or DCPL legal officer make a copy of the material available to the duty lawyer.

If required, a qualified interpreter is to be engaged by the duty lawyer.

J7. A child or young person is seeking advice

If the client is a child or young person (under 18 years of age), the duty lawyer will need to make an assessment of the child or young person's capacity to provide instructions. The age of the child is not a determining factor as to whether the client can access a duty lawyer.

Lawyers acting as child protection duty lawyer for a child or young person must be aware of and comply with LAQ's *Best practice guidelines for working with children and young people* and its supporting *framework*.

In-house staff should honour LAQ's *Service promise to children and young people*

LAQ considers that a child or young person is competent to provide instructions when:

1. they have an understanding of the impact of any decisions they are making
2. they are willing to give instructions to a lawyer, and
3. the child has sufficient intellectual capacity and emotional maturity to understand the basis of their request for assistance.

A duty lawyer can refer a child or young people to LAQ's Child Protection Team for advice.

Information for children and young people in care can be found of LAQ's website.

A duty lawyer must ensure that any instructions taken from a child or young person are taken independently and confidentially, without the influence of the other parties or a non-party. A duty lawyer should only speak with other parties or a non-party in a matter with the consent of the client.

See Part I -Acting in child protection matters for further information about direct representation of children and young people.

J8. Instructions and advice

Duty lawyers must complete a *Child protection duty lawyer form* and record the client's instructions and their legal advice to the client on the duty lawyer form. In-house lawyers may record their legal advice electronically in LAQ Office, if possible.

This should include details of:

1. any documents perused
2. any unusual occurrence
3. any assistance provided with drafting correspondence or documents
4. any referrals given, and
5. the name of any person other than the client who was present.

J9. Negotiations

If reasonably practical and considering service demands, a duty lawyer should attempt limited negotiations with the relevant OCFOS or DCPL legal officer and/or the other parties.

A duty lawyer may negotiate issues such as reaching an agreement on interim orders and or directions and assisting to resolve matters or clarify and narrow issues in dispute.

A duty lawyer should not attempt to negotiate in matters requiring complex and lengthy negotiations. The duty lawyer should advise the client to seek an adjournment of these matters and to apply for legal aid or get private legal representation for the hearing of the application for a child protection order.

It will not be practical for duty lawyers to undertake protracted negotiations across multiple mentions of a proceeding.

J10. Applications for legal aid

A duty lawyer should if appropriate, assist with the completion of a legal aid application form, and provide advice to the client on whether they are likely to be financially eligible for a grant of legal aid.

In-house duty lawyers should also consider what assistance they may provide in the following circumstances:

- A client has a pending legal aid application – including, for example, contacting the grants officer to identify if there are any outstanding documents, providing a copy of any new documents (eg a family report), making a submission in support of a grant of aid, and completing a grants checklist.
- A client has been refused legal aid – including, for example, assisting with on-forwarding a letter of appeal written by the client, a submission in support of a grant of aid where the duty lawyer considers their client may be meritorious. The grants officer can overturn their own decision and therefore may need not refer the matter to a review officer) or providing any outstanding documents (eg proof of income).
- If the client has been refused legal aid and this decision has been upheld by the review officer – a duty lawyer may request the review officer reconsider the decision if new evidence has arisen that supports the client receiving a grant of aid (eg family report). This request is sent to LAQ Grants.

If in-house duty lawyers are assisting clients with legal aid applications then they should be aware of LAQ's best practice for accepting LAQ application forms (LAQ intranet access required).

J11. Representation

The duty lawyer may assist with applying for an adjournment and with short or procedural mentions.

The duty lawyer may appear for an unrepresented party if they have limited ability to appear on their own behalf. The duty lawyer should consider any disability, literacy, language barrier or cultural issue, and geographical location of a client when determining the level of assistance with representation in court. Priority should be given to assisting the most vulnerable unrepresented parties.

Careful consideration should be given by the duty lawyer as to whether it is appropriate for them to represent a client as duty lawyer in contested temporary or interim child protection order hearings.

When representing a client, the duty lawyer should announce their appearance as a child protection duty lawyer.

After each appearance, the duty lawyers should record the following outcome information on the *Child protection duty lawyer form*:

1. if the application has been adjourned, the next date and purpose of the adjournment should be noted, and
2. the interim orders made including any directions.

Details of the next steps should be provided to the client in writing and can be provide via the *Child protection duty lawyer note pad*, if available.

No appearance will be made for:

1. a party who has arranged to be privately represented
2. matters where the party has a current grant of aid for legal representation, as these appearances are the legally-aided lawyer's responsibility
3. mentions in respect of applications relating to subpoenas or to set aside subpoena requiring production of material, or where a person/party has refused to disclose a document or information
4. contested interim order hearings
5. mentions or hearings where final orders are to be made.

J12. Appeal

If a duty lawyer considers an appeal should be made, the duty lawyer should discuss this with the client and provide advice about time limits and procedures for an appeal. This advice must be recorded on the child protection duty lawyer form.

When appropriate, the duty lawyer should assist the client to apply for a grant of legal aid to appeal.

JH13. Administrative requirements

The duty lawyer must complete any necessary administrative work within three business days of the appearance. This includes:

1. completing the *Child protection duty lawyer session report* and lodging the information on LAQ Grants Online
2. in-house lawyers are to complete data entry in accordance with LAQ's *Family Law Services data entry manual for duty lawyer services*
3. arranging for legal aid application forms to be lodged
4. attending any follow-up work and referrals

Part K – Acting as a separate representative – child protection

K1. Role/obligations

LAQ has developed standards for lawyers who are appointed to act as a separate representative in line with CPA provisions. These standards apply to both Childrens Court and QCAT matters. All separate representatives should observe these standards as they indicate what is expected of separate representatives during the course of a matter. The standards of behaviour and practice outlined in this Part need to be read in conjunction with the relevant legislation, practice directions and the like outlined in the Introduction

The legislation provides some guidance about the separate representative's role. CPA ss 99Q and 110 provide that the separate representative must :

's110(4)

(a) …to the extent that is appropriate, taking into account the child's age and ability to understand—

(i) meet with the child; and

(ii) explain the separate representative's role; and

(iii) help the child take part in the proceedings; and

(b) as far as possible, present the child's views and wishes to the court.

(5) … act in the child's best interests regardless of any instructions from the child.'

This responsibility imposes the duty to act impartially, to present direct evidence to the court or QCAT about the child, the child's safety, wellbeing and best interests and their views and wishes, to make submissions with regard to all of the evidence before the court or QCAT, and to assist the court or QCAT in making a decision that is in the best interests of the child. CPA s 110 outlines while the separate representative is not a party to the proceeding on the application, they must do anything required to be done by a party and may do anything permitted to be done by a party. The other parties to the proceeding must act in relation to the proceeding as if the separate representative were a party to the proceeding. The separate representative must comply with any rules, regulations, practice directions, protocols and case management guidelines that may arise in relation to the role.

The professional relationship between the child and the separate representative is not a 'solicitor-client' relationship. The separate representative cannot offer the child a confidential relationship. The child needs to be aware of the basis of the relationship and needs to be made aware that the court and the separate representative will listen to what they have to say but neither are bound by those views and wishes.

Be aware the separate representative's role relates to the proceedings presently before the court or QCAT and ultimately that role will cease. The parties (including Child Safety, the parent/s and the child) may have some ongoing involvement with each other after the separate representative's role ceases. The separate representative must take care to ensure good relations between the parties can be maintained after the separate representative's role ceases.

Lawyers acting as separate representatives must be aware of and comply with LAQ's *Best practice guidelines for working with children and young people* and its supporting *framework*

Lawyers acting as separate representatives must read and be familiar with *Child Safety's principles*:

- Strengthening families, protecting children framework for practice
- Child Placement principle
- Safe and together model, and
- Obligations under the HRA.

Lawyers should be aware of and comply with the *QLS and LAQ Domestic and Family Violence Best Practice Framework for Legal and Non-Legal Practitioners* and other *Best Practice Guidelines* published by QLS and LAQ. Lawyers should also be aware of the *Queensland Government Common Risk and Safety Framework*. These publications provide practical hints and useful information for representing clients affected by violence

Lawyers also should be aware of and comply with LAQ's *Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients*

K2. Conduct of separate representation files

Lawyers accepting a separate representative appointment in child protection and/or QCAT proceedings are subject to all provisions of the LAQ Service Agreement and Undertaking regarding the conduct of these matters.

The separate representative may seek assistance from other lawyers and support staff to help with running the separate representative's file to conduct these matters. This will include assistance with:

- issuing subpoenas
- arranging appointments for assessments
- preparing the case for mention, conference and hearing
- arranging witness attendance at court or the tribunal.

Any assistance must be subject to the separate representative's supervision at all times.

All substantive decisions regarding the conduct of the case and any exercise of discretion must be made by the separate representative, or an appropriately qualified agent (ie another member of the LAQ Separate Representative Panel who has been approved to undertake separate representative work). This will include:

- determining what documents and/or additional information is required from Child Safety's records and obtaining them via the disclosure form, or via subpoena. Care should be taken when issuing subpoenas that this may expose sensitive information about one or more parties to all parties and potential CPA s113 non-parties in the proceedings.
- determining an appropriate expert to retain in a matter
- conducting case discussions with any expert retained
- determining any recommendations to be made to the court at any stage
- attending court mentions on behalf of the child
- attending family group meetings on behalf of the child
- attending court ordered conferences on behalf of the child
- providing instructions to counsel during the course of a final hearing.

K3. In-house precedent package

It is expected in-house lawyers will use the relevant letters and documents contained in the precedent package *(LAQ network access required)*.

K4. Confidentiality

A separate representative is bound by CPA's confidentiality provisions. A separate representative must not use or disclose any acquired information or give document access to anyone else unless the disclosure is necessary to perform the separate representative's functions, or the use relates to the child's protection or wellbeing or is otherwise required or permitted by law.

Note:

The separate representative should not provide the other parties or participants involved in the proceeding with copies of documents that the separate representative has received by way of service or via disclosure from the applicant. This is because the separate representative may receive unredacted copies of documents that other parties or participants may not be entitled to (e.g. to protect the safety and security of another party or person).

If other parties or participants request the separate representative to provide them with copies of documents that the applicant has filed in the proceeding or copies of other documents that have been produced to the separate representative via disclosure, this request should be refused. The party or participant who made the request should be directed to ask the applicant to provide them with copies of the documents that they are seeking.

When providing documentation to report writers or other experts remind them of CPA confidentiality provisions, particularly s 188. This section outlines that as a 'receiver' of information about another person's affairs, the report writer or other professional cannot give access to this information unless the disclosure purpose directly relates to the child's protection or wellbeing or is otherwise required or permitted by law. Any documentation the separate representative provides to report writers or other experts must be retrieved from the expert and destroyed at the conclusion of the matter.

K5. Dealing with DCPL, OCFOS and/or Child Safety

The State of Queensland is represented in proceedings under the CPA by:

a) OCFOS for an application for a temporary custody order, a temporary assessment order or a court assessment order;
b) DCPL for an application for a child protection order.

Child Safety assess the level of intervention required and consult with OCFOS and/or DCPL to make recommendations about the type and length of order that is sufficient to meet the child's protective needs. When child protection proceedings commence Child Safety staff become witnesses to the proceedings and will contribute their child protection expertise to negotiations, evidence gathering, and the provision of oral evidence as required. Child Safety are responsible for case management and will undertake tasks associated with this, including, developing and reviewing case plans and making other decisions that are relevant to the proceedings (e.g. placement and contact arrangements for a child).

Communications with DCPL, OCFOS and/or Child Safety must take the same form as with any other party to the proceedings. Take particular care to accurately record the details of any conversations with DCPL and OCFOS legal officers, and child safety officers. Where possible, consider confirming conversations with DCPL and OCFOS legal officers, and child safety officers in writing.

It is best practice to copy relevant child safety officers and team leaders into any communications that the separate representative has with the DCPL. Consider whether it is appropriate to copy the other parties, including OCFOS, in to maintain transparency and the parties' confidence in the independence of the separate representative.

Remember that the DCPL is obligated to make independent decisions regarding their application which may conflict with the views of child safety officers.

Be mindful of the crossover between the case work responsibilities of Child Safety and litigation role of the DCPL. Consider who has responsibility for decision-making in relation to the particular issue.

K6. Dealing with unrepresented parties

Communications with an unrepresented party must take the same form as with another lawyer. Take particular care to accurately record the details of any conversations with the unrepresented party. Consider sending a letter to the party confirming the conversation details.

The separate representative should use plain English at all times when communicating with unrepresented parties.

Separate representatives should refer to referred to the *QLS and LawRight Self-represented litigants - guidelines for solicitors*. See also *QLS Guidance Statement No. 9 – Dealing with Self-represented Litigants.*

Separate representatives must avoid creating the impression of bias and must remain independent, objective and focused on promoting the best interests of the children.

Other parties involved in the proceedings should be advised of, and if communication is in writing included in, any direct communications with a self-represented litigant.

If the unrepresented party seeks guidance in relation to the court proceedings, the separate representative should refer the unrepresented party for independent legal advice.

K7. Notice of Address for Service

After receiving file material from LAQ, the separate representative should file a *Notice of Address for Service* in the relevant registry.

The sealed *Notice of Address for Service* must be served on all other parties.

It is recommended that a copy of the notice be provided to the OCFOS legal officer and relevant child safety officers so that they are aware of the separate representative's identity and contact details for the purpose of information sharing and invitations to FGMs and CPRMs and for any temporary order applications which may arise.

K8. Letters to parties and/or their legal representatives

Within five business days of their appointment the separate representative should send a letter to the parties advising their appointment and explaining the separate representative's role in the proceedings. The separate representative should also enclose a copy of LAQ's *How will a separate representative help my child in their child protection matter?* factsheet, and a notice to each party that legal assistance is being provided by LAQ to the child in line with LAQ Act s28 . If a party is legally represented, the initial letter for the party will be sent to their legal representative.

After the initial letters, the separate representative should consider how best to obtain information from the parties in relation to any sources they should contact to gain an early insight into the parties and their lawyer's attitudes. The separate representative may also forward a questionnaire to parties or their solicitors with the initial letter or subsequent correspondence, for the party to answer and return along with blank authorities for third persons to release information to them.

The separate representative should take care to communicate in plain and uncomplicated language in all written or verbal communications. Avoid any legalese.

K9. Letters to the child/children

Once appointed the separate representative should consider whether it is appropriate to write to each child to introduce them self and enclose copies of relevant information sheets. In deciding whether this is appropriate, they should consider the child's age and ability to understand, the child's knowledge of the proceedings and the reasons for the separate representative appointment.

Letters to the child/children do not discharge the obligation under CPA s110 to meet with the children as discussed below.

K10. Dealing with non-parties

During their appointment the separate representative may have reason to talk to non-parties interested in the proceedings. Take into consideration that in accordance with CPA s 113 the court may hear submissions from a member of the child's family or anyone else the court considers is able to inform it on any matter relevant to the proceeding.

The separate representative should accurately record the details of all conversations with non-parties and must take special care to not provide confidential information or documents to them, unless directed.

When engaging with non-parties, separate representatives must avoid creating the impression of bias and must remain independent, objective and focused on promoting the best interests of the children.

K11. Dealing with other people working with the child/family

During their appointment, the separate representative may need to communicate with other people who are working with the child including counsellors, school-teachers and other persons. Take care in these discussions as these persons have an ongoing relationship with the child or the child's family which will outlive the separate representative's involvement.

If the separate representative has obtained information about these persons from documents disclosed by Child Safety, they should notify Child Safety of their intention to contact the person prior to doing so. This may require a child safety officer's assistance to obtain further information from the person or to facilitate contact with the person.

The separate representative should accurately record the details of all conversations with other professionals and should take special care not to provide confidential information or documents to them. If the separate representative decides confidential information should be disclosed to other professionals in line with one or more of the exceptions noted in the CPA s 188(3), they should notify DCPL of this view and request they consider making the disclosure. If DCPL will not make the disclosure and agree the disclosure is required, the separate representative must give careful consideration to the disclosure's appropriateness in line with CPA s 188(3), or whether to seek directions from the court.

K12. Disclosure/Documents from Child Safety's file

The purpose of disclosure is to ensure that the parties are fully informed with all documents relevant to the proceeding (see CPA s 189C – 193; CCR Part 6, r 50 – 61; Director Child Protection Litigation – Directors Guidelines Part 4 Duty of Disclosure)

DCPL's duty of disclosure is a proactive and ongoing duty that continues until the proceedings is decided.

Once appointed the separate representative should consider what documents are likely to be in Child Safety's files, and not already disclosed, by reference to the evidence that has been filed in the proceedings (e.g. a medical report referred to in the affidavit but not annexed as an exhibit). Those documents should be requested by way of disclosure or obtained by issuing a subpoena to produce documents.

The separate representative should initially consider obtaining copies of the following documents, if the documents have not already been filed by the applicant:

- information received by Child Safety where it is suspected a child has been, is being, or is likely to be harmed including:
    - notifications (subject to CPA s 186); and
    - child concern reports;
- assessments about whether the child is a child in need of protection including investigation and assessment outcomes and attached documents;
- records of interview;
- structured decision-making assessments including:
    - safety assessments;
    - family risk evaluations and family risk re-evaluations; and
    - reunifications assessments;
        - assessments of the child's strengths and needs;
        - assessments of a parent's strengths and needs;
        - case plans and associated review reports (see CPA s 51X);
        - referrals from Child Safety to another agency;
- information received by Child Safety about the child or their parents from another agency;
- referrals and minutes from Suspected Child Abuse and Neglect Team meetings, Domestic Violence Collaborative Agency Meetings and carer agency meetings;
    - about the child prepared by an external reporter or assessor;
    - reports about a parent prepared by an external reporter or assessor;
    - case notes made by Child Safety, for example, about a child's contact with a parent or a Child Safety visit to a parent;
    - child protection history report(s);
    - criminal, domestic violence, or traffic history of any person relevant to the proceeding;
    - cultural support plans; and
    - correspondence between Child Safety and a parent, including reviewable decision letters
- kinship carer assessments and associated documents
- standards of care (SOC) reviews or memorandum of care (MOC) documents
- other relevant documents (for example protection orders and if available, applications for protections orders; expert reports that have previously been prepared, and if available, the referral made to the expert).

Further documents may become relevant during the course of the matter; and the separate representative should follow the same procedures outlined above to obtain those documents.

Requests for disclosure of a document or documents by a party should be in writing and may be made using the Director of Child Protection Litigation -Directors Guidelines Form E – Request for Disclosure Form. The request should include an adequate description of the document sought.

Requests for disclosure should be as specific as possible when describing the documents required, so that DCPL can locate the documents and organise the best way for access to documents be provided. Information that can help DCPL locate documents includes:

- Who the document is about?
- By general reference, the circumstances to which the documents relate and how the circumstances are relevant to the proceedings
- The date of the document or the time period to which the period relates (see CPA s 190).

If a request for disclosure of a document is made, DPCL must give access to the document unless DCPL is permitted to refuse access under CPA s191(2). If DCPL is of the view that disclosure of a document should be refused, DCPL must advise of the refusal and explain the reason/s why access to the document is being refused.

If DCPL refuse to give access to a document under CPA s 191(2), the DCPL is not required to disclose the document unless the Childrens Court orders disclosure. An application can be made under CPA s 191(4) to ask the Childrens Court to order DCPL to make disclosure. If the Childrens Court orders disclosure, the disclosure is on terms ordered by the Childrens Court (see CCR r 54).

Separate representatives can indicate to DCPL their preferred method of accessing documents when completing the request for disclosure form. For example, DCPL may be requested to post the documents or send them by email (if an electronic copy of the document is available). DCPL will consider requests but it is ultimately up to DCPL as to how access to the documents will be given. For example, if a request is made for a large number of documents, DCPL may ask that separate representatives attend an office to inspect the documents instead and take copies of the documents that are required.

Separate representatives should ensure that they have received disclosure of all relevant documents before key events in the litigation such as a court ordered conference or trial.

DCPL must provide written notice to the court that the duty of disclosure has been complied with. DCPL should file and serve the notice on the parties prior to seeking a final determination of an application. Until the written notice has been filed, the court cannot decide the proceeding. (see CCR r 26 & 61; (see Director of Child Protection Litigation – Directors Guidelines Form F - Disclosure Compliance Notice Form).

K13. Social assessment and other expert reports

The separate representative should consider whether a social assessment report or other expert report is required. Be wary of obtaining unnecessary reports and exposing the child to systems abuse. Consider why the report is being obtained and whether the report is necessary in the circumstances.

Separate representatives should carefully consider the type of report required and what qualifications are needed in the report writer.

Separate representatives and social assessment report writers should be aware of the *Australian Standards of Practice for Family Assessments and Reporting*

When engaging a social assessment report writer, the separate representative should ensure that expert engaged is appropriately qualified and experienced - in particular family assessors must be qualified social science professionals and function as independent and impartial assessors:

a. the qualifications held by the family assessor must be either those accepted by the family law courts, or sufficient to be able to establish their expertise as a forensic assessor of parents, children, family relationships, parental capacity and factors impacting on the welfare and parenting of children.

b. as an expert witness, family assessors should have appropriate training, qualifications and experience to assess the impact and effects (both short and long term) of domestic and family violence or abuse, or exposure to domestic and family violence or abuse, mental health problems and drug or alcohol misuse on the children and any party to the proceedings.

c. generally family assessors should have qualifications such that they are eligible for membership or are members of the Australian Association of Social Workers (AASW) or are registered as a psychologist with the Australian Health Practitioners Regulation Authority (AHPRA), meet the mandated or recommended requirements of those bodies in relation to ongoing professional development, and have professional clinical experience working with children and families.

d. regardless of how the arrangements for their services are made and how the family assessor is to be remunerated, the family assessor should always function as an impartial assessor.

e. family assessors should provide up to date particulars of their qualifications and experience as a social scientist and family assessor as part of their report.

To check that a psychologist is registered, a search can be conducted via the APHRA website

Anyone who is wanting to practice as a psychologist in Queensland must be registered. To be registered, a psychologist must have undertaken six years of study; of which a minimum of four years must be tertiary study, and a maximum of two years may be supervised practice. The supervision component is via a formal Board-approved Supervised Practice Program, and requires the submission of pieces of assessment, and passing an examination.

For social workers, the situation is different. Social workers do not need to be registered to practice, and do not need to be members of the AASW. AASW membership is voluntary, and many social workers choose not to join (typically for financial reasons). AASW only allows membership to those with approved social work qualifications, and quality assures the content of tertiary courses to determine eligibility. That is why most social work positions state that an applicant must be "eligible for membership of the AASW"; as membership cannot be enforced, but eligibility indicates an appropriate tertiary qualification.

Due to social workers lacking a formal registration requirement, there is nowhere that separate representatives can confirm that a social worker is eligible for membership with AASW. A list of current accredited Australian courses can be found on the AASW website. However, this has been known to change from time to time; and does not include international qualifications. AASW does offer a fee-for-service assessment, whereby they will determine whether overseas studies are sufficient for membership.

Separate representatives should ask social workers to confirm that they are a member or eligible for membership of AASW.

Please note that different grants of aid are available for different types of expert reports and the separate representative should take care to seek the correct grant of aid. The separate representative should also consider which persons need to take part in the assessment. If the assessment will involve the parents and the child, consideration should be given to the child safety officers involved in the matter also being interviewed as they are the authors of the child protection concerns risk assessment.

It is a condition of the grant of aid to obtain a social assessment report and a consideration in relation to obtaining other expert reports, that the separate representative will have obtained relevant documents from Child Safety's files and used their professional judgment to:

- confirm that any previous reports on Child Safety's file are not sufficient to assist the court or QCAT in determining the matter
- determine that obtaining a social assessment or other report is necessary to assist the court or QCAT to determine the outstanding issues before the court or QCAT, and the orders or decisions that will promote the best interests of the child, and
- consider whether the required report should be obtained by Child Safety (eg if Child Safety alleges a parent has psychiatric issues that require an assessment then Child Safety should obtain and pay for that report as part of their case).

If the separate representative thinks a report should be obtained as part of the applicant's case, then request they obtain it. It is good practice to make this type of request in writing. If the applicant refuses to obtain the report, or if the separate representative determines it is not appropriate for the applicant to obtain the report, consider applying for a grant of aid to obtain this report.

Where the costs of a report are likely to exceed the costs paid at LAQ rates, contact the applicant and request financial assistance to obtain the report. The separate representative should be aware departmental policy dictates that where Child Safety is contributing to the cost of the report, then Child Safety will usually want input into the expert that will be engaged, the terms of the letter of instruction, and what documentation will be provided to the expert. In these circumstances, the process for briefing the expert is similar to briefing a single expert in the family law jurisdiction.

Where a joint brief of an expert is not appropriate in the circumstances, consider applying for a grant of aid to cover additional costs. Please note that such requests must be made prior to any costs being incurred.

The separate representative should carefully consider how the report interviews should be conducted and consult with the expert about this. This consultation process should include:

- who should be invited to attend the interviews?
- where the interviews should be held
- how long required for each interview
- whether it is appropriate in the circumstances of the case to arrange observations between the parent/s and the child/ren
- whether any modifications to the interview schedule are required because of domestic and family violence and/or concerns about the safety of the participants.

The separate representative should also advise Child Safety as to the proposed interview schedule and obtain their views as to whether it is appropriate.

The process of determining whether to obtain a report, deciding which expert to brief and considering the report interview arrangements should be clearly documented on the lawyer's file.

If the separate representative decides to obtain a report, send letters to each of the parties, including Child Safety notifying them a report will be prepared, provide the report writer's name and enclose relevant LAQ factsheets.

If the separate representative considers that a report other than a social assessment report is necessary, for example a parental capacity assessment, they should turn their mind to whether it is part of the applicant's case and therefore the applicant's responsibility to obtain the report. If the separate representative considers it necessary for the report to be obtained as part of the separate representative's case, an appropriate grant of aid should be sought as this will not be covered under a grant of aid for a social assessment report.

A separate representative is not bound by the recommendations of the social assessment report writer and it should be noted that the social assessment report is only one piece of the evidence. The separate representative must make submissions based on all of the evidence before the court.

K14. Engaging an expert

The separate representative should engage an expert after considering the issues to be addressed and expert's qualifications and experience. Consult with other separate representatives or experts before selecting an expert.

The separate representative must brief the expert with a clear letter of instruction (referral) along with all information and documentation necessary to complete the assessment. The referral should specify the issues the expert must address in their report while not restraining the expert's assessment process.

In the brief to the expert clearly mark the material as confidential and not to be disclosed in line with CPA s 188. The separate representative is not bound to adopt any of the expert's recommendations, they are to be considered as one part of the evidence before the court, and all of the evidence must be evaluated in context.

When an expert produces a report, it should be attached to an affidavit setting out the expert's qualifications and experience. The letter of instruction (referral) must also be exhibited to the affidavit.

A copy of the affidavit and report should be filed in the registry and served on all parties. A copy of the affidavit and report should also be provided to the relevant child safety officer and team leader.

After receiving the report and before filing an affidavit from the expert, the separate representative should carefully review the content and determine whether it can be disclosed in full to all of the parties.

If the report includes information that the separate representative is concerned about disclosing to one or more of the parties, the separate representative should consider making an application in a proceeding for service copies of the report to be redacted.

If the separate representative considers that further clarification of the expert's recommendations is required, the lawyer should:

- write to the expert outlining the matters that the separate representative would like clarified
- obtain the expert's clarification by way of addendum report or written correspondence

- file an affidavit containing the original report, the letter from the separate representative to the expert seeking clarification, and the expert's addendum or written correspondence in reply.

The separate representative must carefully consider and evaluate the evidence provided by the expert. If the separate representative determines that they will not rely on the evidence obtained from the expert, or that they do not support any of the recommendations of the report writer, the rationale for this decision should be clearly documented on the file and communicated to the parties.

It is important to keep detailed file notes of all conversations had with the report writer and avoid having discussions with the report writer about what recommendations they should make, even if those discussions are initiated by the report writer.

K15. Where there are allegations of domestic and family violence

When hearing a child protection proceeding, a Childrens Court may make or vary a protection order against a parent (DV Act s 43).

A Childrens Court can make the order on its own initiative or on a party's application including a separate representative. If a protection order is already in force against a parent of a child for whom an order is sought in the child protection proceedings, the court must consider the existing order and whether it needs to be varied, given the child protection proceedings. DV Act s 43 outlines the process to be used by the court.

Consider any allegations of domestic or family violence or any protection orders already in force and whether an application for a protection order would be an appropriate course of action as separate representative.

Part G – Acting in domestic violence matters should be reviewed by separate representatives for further guidance.

K16. Meeting with the child/ren

The separate representative must meet with the child/children during the term of their appointment unless they form the view that such meeting would not be in the best interests of the child/children. The separate representative should have regard to the risk of the child/children being exposed to systems abuse. If the separate representative forms the view that meeting the children would not be in their best interests, the rationale for this decision must be clearly documented on the file.

Before meeting with the child, consider why, when, how and where the meeting occurs, the age of the child/children, whether the child is expressing a wish and the impact meeting the child may have on the child. Appropriate avenues for the meeting can include the Child Safety Service Centre or the child's placement or residential care facility.

The separate representative should consider whether it is appropriate for the meeting to be facilitated by the social assessment report writer, the child advocate or the direct representative, if one is appointed. It is best practice to advise the child safety officer of the separate representative's intention to meet with the child/children.

The separate representative must not utilise their meeting with the child/children as a way in which to conduct an interview or formulate their own child protection concerns risk assessment.

When meeting with a child the lawyer should explain their role as their separate representative and answer any questions the child has about the legal process. Depending on the child's age and ability to understand, the separate representative can provide the child with a copy of the LAQ factsheets:

- *Child protection and the Childrens Court*
- *Having your say in the Childrens Court for young people in care* and/or
- *What to expect when you go to the Childrens Court*

The separate representative should also explain that while their role is to present the child's views and wishes to the court, the role also requires the separate representative to present to the court arrangements that would be best for the child based on the evidence, and that ultimately what is considered by the separate representative as best for the child may not be the same as the child's views and wishes. Also

explain that the court or QCAT will ultimately make any decisions about the matter taking into account the child's views and wishes along with all of the evidence and submission on that evidence made by the parties.

The separate representative should explain to the child/ren their options for participating in their child protection matter, including:

- speaking with their child safety officer about their views and wishes
- speaking to a report writer
- attending a family group meeting
- writing a letter to the magistrate and/or
- attending court to meet with the magistrate.

In house staff should honour LAQ's *Service promise to children and young people*

Separate representatives should have regard to the rights of children and young people to participate in decision making.

Full details of the separate representative's meeting with the child/ren must be recorded on the file.

K17. Family group meetings and case plan review meetings

CPA s 51L outlines that a separate representative (as a legal representative of the child), must be given a reasonable opportunity to attend and participate in an FGM or CPRM being convened to develop or review a child's case plans.

The case plan will be reviewed at least every six months in accordance with CPA s 51V (4).

Reviews will occur as a CPRM rather than an FGM and is usually convened by the child safety officer and team leader.

Subject to a grant of aid, the separate representative must attend in person any FGM or CPRM convened by Child Safety or FPP during their appointment as the separate representative, unless they are given permission to attend via telephone or other electronic means by the FGM or CPRM convenor. Practitioners are responsible for managing their diaries to avoid double booking.

FGMs and CPRMs seek to provide family-based responses to children's protection and care needs, and to ensure an inclusive process for planning and making decisions about the children's wellbeing and protection and care needs.

Be aware that matters discussed at FGMs are admissible in any court proceedings except in a criminal proceeding, CPA s 51YA.

Focus on developing an appropriate case plan which meets the child's assessed protection and care needs.

The case plan must include the following matters:

- The goal for best achieving permanency for the child and the actions to be taken to achieve the goal.
- If returning the child to the care of a parent is the goal for best achieving permanency for the child – an alternative goal in the event that the timely return of the child to the care of the parent is not possible.
- For an Aboriginal or Torres Strait Islander child – how the case plan will be consistent with the connection principle stated in CPA s 5C.
- If the child is 15 years or older and does not have a long-term guardian other than the chief executive, the case plan must also include actions for helping the child transition to independence.

The case plan may include a goal or goals to be achieved by implementing the plan, for example:

- arrangements about where or with whom the child will live, including interim arrangements
- services to be provided to meet the child's protection and care needs and promote the child's future wellbeing
- matters Child Safety will be responsible for including particular support or services to be given to the child and the child's family to allow the child to return to their family if the return is in the child's best interests

- the child's contact with the child's family group or other persons the child is connected to
- arrangements for maintaining the child's ethnic and cultural identity
- matters the parent or carer will be responsible for, and
- a proposed plan review date.

The case plan should also reflect the capacity of the parties to engage with support, therapeutic or other services.

If there is no agreement with case plan goal/s, outcomes or Child Safety's proposed actions, make sure this is noted in the case plan and that the separate representative's position about the case plan goal is noted.

Make sure the goal/s and outcomes listed in the case plan are achievable by the parties, and includes some clearly defined mechanism to measure the progress of parties in achieving the case plan goal/s. For example, instead of saying a party will submit to drug testing, include descriptive actions such as how the request will be made for the party to submit to drug testing (in writing/in person/via phone), where the test occur and who will pay for it, who gets the results, and how success will be measured eg five clear drug tests in a three-month period.

Where a case plan has been reviewed, draw Child Safety's attention to their obligation under CPA s 51X to file a copy of the review report along with the revised case plan, and request the review report include the client's achieved goals relating to the outcomes.

If an earlier case plan is in existence consider the outcomes and goals which have already been achieved by the family, and which do not need to be included in the new case plan. The separate representative may request that previous outcomes be included in the case plan with a notation that the goal has been achieved by the family.

K18. Attending court events

The separate representative must personally attend all court events for the matter in accordance with the grants of aid, unless the court event is adjourned on the papers with the consent of all parties, or another separate representative is briefed to appear.

Before each court event the separate representative should:

1. obtain an appropriate grant of aid to attend
2. consider whether the resolution of issues between the parties is possible prior to the court event
3. ensure the parties' have been served with any updating material
4. consider all of the evidence before the court and have a position that is able to be communicated to the other parties
5. consider whether an interim order in favour of the chief executive or other suitable person is necessary in the circumstances.

It is expected that practitioners will manage their diaries to avoid conflicting court commitments.

If the separate representative can't physically attend because the court is in a remote area or they have other court commitments, the separate representative should, at least seven (7) working days prior to the court mention, make arrangements to seek leave to appear at the court event by telephone or other electronic means.

If leave to appear by telephone or other electronic means is not granted or not possible, the separate representative must, at least three working days prior to the court event engage an appropriately qualified agent who must also be on the LAQ Separate Representative Panel.

Any agency requests to an in-house lawyer must be made in writing to the relevant lawyer or team and must contain details of all parties and children (including dates of birth) involved in the proceedings so that a conflict check can be conducted. Instructions must not be sent to an in-house lawyer until the agency request has been accepted.

Australian Solicitors Conduct Rules relevant to mentions and interim hearings

A solicitor must not, in the presence of any of the parties or solicitors, deal with a court on terms of informal personal familiarity which may reasonably give the appearance that the solicitor has special favour with the court (r 18.1).

A solicitor must not deceive or knowingly or recklessly mislead the court and must take all necessary steps to correct any misleading statements made by the solicitor to a court as soon as possible after the solicitor becomes aware that the statement was misleading (rr 19.1–19.2).

A solicitor seeking any interlocutory relief in an ex parte application must disclose to the court all factual or legal matters which are within their knowledge and are not protected by privilege and that the solicitor has reasonable grounds to believe would support an argument against granting relief or limiting its terms adversely to the client (r 19.4).

A solicitor must, at the appropriate time in the hearing of a case if the court has not yet been informed of that matter, inform the court of any binding authority, where there is no binding authority, any authority decided by an Australian appellate court and any applicable legislation known to the solicitor and which the solicitor has reasonable grounds to believe to be directly on point, against the client's case (rr 19.6, 19.8).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

A solicitor must not, outside an ex parte application or a hearing of which an opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless the court has first communicated with the solicitor…or the opponent has consented beforehand…a solicitor must promptly tell the opponent what passes between the solicitor and a court in a communication… (rr 22.5–22.6).

A solicitor must take steps to inform the opponent as soon as possible after the solicitor has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, of that fact and the grounds of the application, and must try, with the opponent's consent, to inform the court of that application promptly (r 22.8).

K19. Applications for adjournments or interim orders

From time to time a separate representative may need to request an adjournment of proceedings for a child protection order application. The separate representative must only apply for an adjournment if it is in the best interests of the child to do so, being mindful that it is in the child's best interests for the application to be heard as early as possible.

If the separate representative intends to request an adjournment, they should notify all parties of this intention and the reasons why the adjournment is being sought.

At each mention of the matter, the separate representative should consider whether any interim orders relating to the child are necessary, for example an interim order granting temporary custody of the child to the chief executive. The separate representative must consider whether the child/ren would be at an unacceptable risk of suffering harm during the adjournment period if interim orders were not made.

The separate representative should review the current case plan and assess its appropriateness before each mention.

Consider CPA ss 66, 67–68 and whether to make an application for orders:

a) regarding things the court could direct the parties, chief executive or CPA s113 participant to do during the adjournment period

b) restricting a parent's contact with the child

c) authorising an authorised officer to have contact with the child

d) requiring a social assessment report about the child and the child's family be prepared and filed in court, ensuring that any proposed social assessment report writer is appropriately experienced and qualified as per the Australian Standards of Practice for Family Assessments and Reporting

e) authorising a medical examination or treatment of the child and requiring the examination or treatment report be filed in court

f) for the child's contact with their family during the adjournment period

g) requiring the chief executive to convene a family group meeting to develop or revise a case plan and file the plan in the court; or to consider, make recommendations about, or otherwise deal with another matter relating to the child's wellbeing and protection and care needs

h) to hold a conference between the parties to decide the matter in dispute or to try to resolve the matters before the proceeding continues, and/or

i) for a protection order.

Prior to the mention day, the separate representative should make contact with the relevant court to determine the registry's applicable practices and procedures, for example, in some places where a Childrens Court is constituted, the magistrate will require legal representatives to remain seated throughout any appearance.

On the mention day, the separate representative should arrive early at court. The separate representative must advise the court of the material they intend to rely on to support any application for interim orders or for interim orders to be discharged. The court may ask for the submissions that support a position. The separate representative should make reference to relevant sections of the CPA and the relevant procedural rules.

When considering submissions as a separate representative, the lawyer should consider the principles stated in the CPA ss 5–5E, where relevant. CPA s 5A outlines the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount for administering the Act. CPA s 5B sets out a series of 13 general principles for ensuring the safety, wellbeing and the best interests of a child and s 5BA sets out principles for achieving permanency for a child. CPA s 5C sets out additional principles for Aboriginal or Torres Strait Islander children. The separate representative should also consider CPA s 9 'What is harm' and s 10 'Who is a child in need of protection' and any other relevant sections of the CPA.

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

The separate representative should ensure copies of every order are received from the relevant registry or the applicant and placed on file.

K20. Entering into negotiations

The separate representative is required to form a view based on the evidence of what arrangements are in the best interests of the child. That view may change throughout the proceeding, based on the evidence that becomes available, and the separate representative's view should be responsive to new evidence as it comes to the separate representative's attention.

When the separate representative forms a view in relation to the matter, that view should be communicated to the parties through their solicitors (if they are represented) or directly (if they are not represented), as soon as practicable after forming the view.

In entering into negotiations, keep in mind the separate representative's role to act in the best interests of the child.

When considering any settlement proposals, consider the appropriateness of the child's case plan, and the type/s of child protection order/s proposed and whether the case plan requires amendment before any order/s are made.

If the parties reach an agreement the separate representative cannot support, refer the matter to the court; the separate representative should make submissions stating their view.

K21. Court ordered conference

The purpose of the court ordered conference is to narrow or resolve the matters in dispute. The separate representative must attend the court ordered conference in person or make arrangements for an appropriately qualified agent who is appointed to the LAQ Separate Representative Panel to appear on the separate representative's behalf. Practitioners are responsible for managing their diaries to avoid double-booking.

DCPL's duty of disclosure is a proactive duty (see CPA s 189C – 193, CCR Part 6, r 50 - 61). Separate representatives should ensure that they have received disclosure of all relevant documents before the court ordered conference.

At the court ordered conference the separate representative should advise the parties of their view and of any prospects of settlement. They should assist in making recommendations for the future conduct of the case.

At the conclusion of the conference, the convener will prepare a written report that is filed in court, and provided to the parties, containing the conference outcome including whether an agreement has been reached, and the order/s the parties will seek.

Communications at a court ordered conference are confidential and cannot be used in any court proceeding unless all parties consent to their use. If the separate representative wishes to advise the court of the court ordered conference communication content, they must first obtain the consent of the parties.

If subsequent material filed by the applicant contains court ordered conference communications, ask the applicant to withdraw the material. If the material is not withdrawn, the separate representative should make an application to the court to disregard that material.

K22. Mention following the court ordered conference

The matter will be mentioned again after the court ordered conference. If an agreement has been reached, the parties can request the court make the order/s at this mention.

The separate representative should keep in mind that the Childrens Court is not a consent jurisdiction and parties cannot consent to orders being made. The Court must be satisfied that the child is in need of protection and that the orders proposed are the least intrusive orders required to secure the child's protection, regardless of any agreements reached between the parties.

However, the CPA s 105 notes the court is not bound by the rules of evidence but may inform itself in any way it thinks appropriate. The court must be satisfied on the balance of probabilities for any matter before the court. The *Child Protection Bill 1998* explanatory notes state:

> 'The court is inquisitorial and may use whatever means it wishes to inform itself. For example, the court may accept a submission from interested family members or may ask to speak to the child in the magistrate's office.'

The separate representative cannot be neutral where an agreement is reached to settle the matter - they must be satisfied that any agreement reached between the parties and the orders proposed is in the best interests of the child.

If the parties do not reach an agreement and the matter is proceeding to a contested hearing, the separate representative should use this mention to obtain directions on the steps that need to be taken to prepare the matter for trial.

Key tasks to prepare for the mention:

1. Develop a case theory where possible.
2. Prepare a plan for the trial – what are the issues? What evidence is needed to support each of the parties' applications? How long will it take to prepare for trial?
3. Consider whether expert witnesses and a social assessment report are needed, or whether an existing report needs updating.

4. Consider whether it is necessary to seek directions for disclosure (CCR r 58). Consider whether it is necessary to issue a subpoena for the production of Child Safety's file. Consider what other subpoenas may need to be issued.
5. Identify the current case plan's review date; will it need to be reviewed prior to the trial
6. Consider the likely number of witnesses and trial length– include time assessment for opening statements, the need for further evidence in chief, cross examination, re-examination and submissions.
7. Subject to a grant of legal aid, confirm counsel's availability to be briefed.
8. Request a date for hearing and filing directions, and
9. Consult the registry about the court's particular practice, as practice varies across the State.

At the mention, the separate representative should seek trial directions when appropriate - including preparation and filing dates for each party, with the applicant filing its material first, followed by the separate representative's material and allowing sufficient time for the parents to file their material in response. See *Suggested trial directions — Childrens Court* (Annexure B).

Immediately after the mention, aid should be sought to prepare for trial and attendance at trial. For complex matters seek aid for counsel.

K23. Preparation for trial

When preparing for trial:

1. ensure an updated grant of aid is available
2. if a counsel grant of aid has been approved, confirm counsel for the trial in writing, setting out trial dates and fees payable in line with LAQ's *Scale of Fees*
3. ensure DCPL have complied with their disclosure obligation prior to trial. Consider whether it is necessary to seek directions for disclosure (CCR r 58). Consider whether it is necessary to issue a subpoena for the production of Child Safety's file
4. issue subpoenas — together with conduct monies, and provide notice to all parties
5. inspect all material returned under subpoena
6. consider requesting a copy of any protection order application/s or order/s from the relevant Magistrates Court registry
7. consider asking the court to make or vary a protection order on behalf of one of the parties, and whether the child/ren should be named on the order
8. inform witnesses of trial dates and ensure they have a copy of their affidavits or evidence, their availability to give evidence and arrange times for their attendance for cross examination to minimise waiting time
9. prepare objections to affidavits and documents to be tendered
10. liaise with the other parties/their lawyers to prepare and file material in accordance with court directions
11. consider whether the matter is appropriate to be dealt with on the papers, for example if the alleged harm is admitted, the appropriate type of order has been agreed and the only issue in dispute is the length of the order or the appropriateness of the case plan, and
12. consider meeting with the child to advise them of the trial, how the trial will be conducted, the evidence to be placed before the court about the child's views and wishes, and details of what is considered to be in the child's best interests which will be put to the court.

K24. Evidence and witnesses

Where a matter is contested and listed for hearing, consider each affidavit and exhibit to be relied on at hearing, and give appropriate notice if a person is required to attend the court for cross examination. In addition to child safety officers and the parent/s, consider any health practitioners that have undertaken any examinations, assessments, or treatments, any counsellors engaged in a therapeutic role, police officers that have provided statements or information and any other experts that have been engaged and produced reports.

Witnesses will need to be organised well in advance. When calling a witness, the lawyer should attempt to provide that evidence to the court via affidavit material filed and served on the parties.

A separate representative should serve all parties with their material. The separate representative should ensure the parties call all the relevant witnesses to ensure that the matter can be determined in the child's best interests. If the parties to the proceeding refuse to call a relevant witness, the separate representative should consider calling that witness.

When calling a witness, the separate representative is responsible for ensuring the witnesses' attendance at the hearing.

It is the separate representative's role to test the case of each of the parties at trial. Therefore, it is normal practice for the separate representative to cross examine all relevant witnesses regardless of whose case they are called in.

K25. Issuing subpoenas

Separate representatives should take care when issuing subpoenas for the production of records that the subpoena and the documents sought will be relevant to the case and is necessary in the circumstances. It is not uncommon for the records to contain sensitive information, including information about traumas suffered by the parties, that they would not want disclosed to others in the proceedings, or could constitute a risk to a party's safety. Documents obtained under subpoena will potentially be available to all in the proceedings, including CPA s113 non-parties.

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

K26. Disclosure of an expert's notes and the separate representative's file

Requests for expert notes

Parties, both represented and self-represented, may request that the separate representative disclose the notes from the interviews which form the basis of the assessment and report by a social assessment report writer or other expert.

Requests are sometimes made for the notes to be produced in person and by electronic means, or to be made available to the parties to inspect or copy prior to, or in close proximity to, trial.

These notes are the property of the expert in question and there is little that a separate representative can do to compel an expert to produce their notes. If the separate representative receives a request for a copy of the expert's notes, it is not appropriate for the separate representative to provide a copy to the requesting party, as in the case of experts employed at LAQ the notes are within the possession and control of LAQ (and not the separate representative); and in the case of experts in private practice the notes are within the possession and control of the private practice (and not the separate representative).

Given that the expert is not a party to the proceedings, a subpoena to the expert is the appropriate way for a party to request the notes to be produced to the court. A subpoena to produce documents issued to an expert may also require them to produce other documents in their possession evidencing communication that the expert has had with others, including the separate representative.

It is not appropriate for the separate representative to provide legal advice to the expert about responding to the subpoena. If needed, the expert should seek independent legal advice.

In these circumstances, the notes and any other documents would be produced to the court, and the court would consider the appropriate access to the parties and whether or not the documents produced may be inspected and/or copied. The notes and any other documents produced would be held at the subpoena documents section of the court precincts.

Separate representatives who have requests made to them to have experts' notes produced should refer parties to the appropriate course of action.

Otherwise separate representatives should only endorse the production of an expert's notes if there has been a court order or a court direction.

It is expected that a separate representative would not oppose the production of any expert notes pursuant to a court order, direction, or subpoena.

If a court orders or directs an expert to produce their notes, or when an application is made for such order/direction, it is suggested that the separate representative seek an order that the documents be held securely in the subpoena documents section of the relevant Childrens Court and that the parties are to make appointments to inspect those notes. If the court will not make an order for the documents to be held in the subpoena section, then arrangements should be made to view the notes at a secure location in the separate representative's office.

Disclosure or client legal privilege for the separate representative

Legal privilege does not apply to a separate representative acting in a child's best interests. This is based on the fact that a separate representative has an overriding duty to the court to present any evidence or make any submissions that are in the child's best interests.

Separate representatives should be aware that their file may be requested to be disclosed at some stage of proceedings by the parties. This would include file notes and other documents, including those that evidence communication that the separate representative has had with experts and others.

Separate representatives should be aware that their file may be requested to be disclosed for the purposes of other proceedings (for example criminal law proceedings, inquests). This would include file notes and other documents, including those that evidence communication that the separate representative has had with experts and others.

K27. Briefing counsel

LAQ guidelines do not normally enable counsel to be engaged for an interim issues hearing, although it is possible in exceptional circumstances.

As soon as trial dates are set and aid has been approved for the trial, counsel should be retained and briefed for the trial. Counsel must be appropriately qualified and experienced to act on behalf of the separate representative, and reference should be made to the requirements for appointment as a separate representative to the LAQ Separate Representative Panel when determining if counsel is appropriately qualified.

The separate representative should arrange a conference with counsel as early as practicable, prior to the scheduled commencement date of trial. It may be useful to discuss the matter with counsel to assist in the development of the case plan.

The brief to counsel must include instructions to counsel, together with all relevant court documentation including any trial plan, copies of any subpoenaed material available properly indexed (or summary if necessary, although leave to obtain copies of subpoena material should be sought by the separate representative during the course of the proceedings), copies of relevant diary notes, correspondence and other documentation.

Instructions to counsel should set out the trial dates and court in which the proceedings are listed for hearing, the basic premise of the case, a list of the witnesses to be called and the summary of argument or case outline.

If there are any particular issues in the case that should be brought to counsel's attention, these issues should be clearly spelt out in counsel's instructions.

All briefs to counsel are marked "Legal Aid Brief". Where appropriate, a pro-forma invoice is forwarded to counsel with the brief. Any counsel briefed in a legal aid matter accepts the brief on the basis that they will be paid at legal aid rates which are set out in the LAQ *Scale of Fees* unless otherwise provided.

K28. Role at trial

The separate representative's role at the final hearing includes:

- testing the parties' and their witnesses' evidence by cross examination
- ensuring all relevant evidence is before the court regarding the safety, wellbeing and best interests of the child
- to present the child's views and wishes where they can be ascertained
- to facilitate negotiations wherever it is appropriate, and
- to make submissions based on the evidence before the court, highlighting the alternative orders open to the court on the evidence, and proposing orders that are in the best interests of the child (in the separate representative's opinion).

K29. Attend trial and instruct counsel

CPA s 105 notes a Childrens Court is not bound by the rules of evidence but may inform itself in any way it thinks appropriate. The balance of probabilities is the burden of proof required for any matter before the court. The court will normally follow the usual course of litigation. The lawyer should ensure the department presents its case first and ensure objections to evidence are made in the usual way and in accordance with the accepted rules of evidence during the proceedings. The magistrate can then indicate when the rules are to be dispensed with.

The separate representative should take accurate records of the proceedings including witness names and times of hearing. It is recommended the lawyer maintain an adequate summary of questions and answers during the course of the trial.

The separate representative is personally responsible for instructing any counsel retained during the course of the proceedings.

Australian Solicitors Conduct Rules relevant to trials

A solicitor must alert the opponent and if necessary inform the court if any express concession made in the course of a trial in civil proceedings by the opponent about evidence, case-law or legislation is to the knowledge of the solicitor contrary to the true position and is believed by the solicitor to have been made by mistake (r 19.12).

A solicitor must inform the court of any misapprehension by the court as to the effect of an order which the court is making, as soon as the solicitor becomes aware of the misapprehension (r 19.11).

…in proceedings in which an allegation of sexual assault, indecent assault or the commission of an act of indecency is made and in which the alleged victim gives evidence, a solicitor must not ask that witness a question or pursue a line of questioning of that witness which is intended to mislead or confuse the witness or ...be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive and …must take into account any particular vulnerability of the witness in the manner and tone of the questions that the solicitor asks (r 21.8).

A solicitor must not take any step to prevent or discourage a prospective witness or a witness from conferring with an opponent or being interviewed by or on behalf of any other person involved in proceedings (r 23).

A solicitor must not advise or suggest to a witness that false or misleading evidence should be given nor condone another person doing so; or coach a witness by advising what answers the witness should give to questions which might be asked (r 24).

A solicitor must not confer with …more than one lay witness (including a party or client) at the same time about any issue which there are reasonable grounds for the solicitor to believe may be contentious at a hearing and where (it) would affect evidence to be given by any of those witnesses unless ...(there are) reasonable grounds (r 25).

A solicitor must not confer with any witness (including a party or client) called by the solicitor on any matter related to the proceedings while that witness remains under cross-examination (with some “special circumstance” exceptions) (r 26).

In a case in which it is known, or becomes apparent, that a solicitor will be required to give evidence material to the determination of contested issues before the court, the solicitor may not appear as advocate for the client in the hearing (r 27.1)

A solicitor must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or the administration of justice (r 28).

K30. Appeal

The separate representative must consider whether grounds of appeal exist in every case. If another party does not lodge an appeal, request a grant of legal aid and if successful, lodge the appeal.

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

In-house lawyers must consult with their principal lawyer and the Family and Civil Justice director about the merits of any appeal before making an application for aid to appeal.

If a separate representative is served with a *Notice of Appeal*, they should request a grant of legal aid and participate as appropriate in the appeal.

K31. Provision of information to the child

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

Where appropriate, consider the best way to communicate this information to the child taking into account the child's age and ability to understand. It is best practice to meet with the child in the presence of the report writer, the child advocate, direct representative or child safety officer who can assist if the child is unhappy with the outcome.

If an order is made, inform the child of their rights in care and the standards of care that should be provided to them by Child Safety, as appropriate. Where appropriate the lawyer should also inform the child of their rights to commence proceedings in QCAT and provide an indication of which Child Safety's decisions are open to review.

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

The child should be referred to the Office of the Public Guardian and have the role of the community visitor and child advocate explained to them.

If a separate representative becomes aware the child is eligible to apply for criminal compensation or to commence negligence or other proceedings arising from their time in care or the circumstances by which they came into care, then they should bring these matters to Child Safety's attention and the child's attention if appropriate.

K32. Dealing with criticism of the separate representative

A separate representative may be the subject of criticism by another party. This may develop into abuse or harassment. The separate representative should make clear and accurate records of any telephone conversations, limit contact with the relevant party, require all communications to be in writing and confirm the details of any verbal contact in writing.

If there are fears for personal safety, the separate representative has the same legal rights and remedies as any other citizen. LAQ should be made aware of any concerns and intended actions.

If a letter of complaint is received regarding a LAQ in-house separate representative, this should be immediately referred to the Family Law and Civil Justice Services director.

If LAQ receives a complaint regarding a separate representative it will seek comment or a response from the separate representative about the issues raised, investigate the complaint and respond to the party and the separate representative in an appropriate manner.

K33. Completion of the separate representative's role

The separate representative's role ends when an application is decided or withdrawn. If there is an appeal in relation to the application, the separate representative's role ends when the appeal is decided or withdrawn.

In exceptional circumstances, Child Safety and the other parties may ask a separate representative to attend a further family group meeting after the proceedings have concluded if they think the separate representative will make a useful contribution to a case plan's development or review at the meeting. In those instances, the lawyer should provide LAQ with sufficient information to determine the merits of funding the separate representative's ongoing involvement.

The separate representative should also ensure that all accounts are finalised in a timely manner.

Separate representatives should notify LAQ of the outcome after each grant of aid completion and when submitting their final account for payment and file finalisation. In-house staff will not be able to finalise a file unless a report has been submitted to LAQ Grants on the outcome of each grant of aid.

In-house lawyers should refer to the *File management standards – litigation support officers* to be aware of their responsibilities in closing a file.

Annexures

A. Family law and domestic violence advice worksheet
B. Suggested trial directions — Childrens Court

Document effective date

February 2021

Contact

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A. Family law and domestic violence advice worksheet

Client name: _____ Client no: _____

Lawyer's name: _____

Referred by: _____ Date: _____

I have discussed and advised this client as indicated below and taken instructions as noted:

Domestic violence

- ☐ Is aggrieved / respondent to DV application
- ☐ Has Temporary or Final Protection Order for / against sighted / not sighted
- ☐ Has client ever had previous DVO? Y / N

  When did it expire? _____ Which court? _____

- ☐ Has other party ever breached current or previous DVO? Y / N

  When? _____

  Details: _____

  Were the police told? _____

- ☐ Was the other party charged with breach? Y / N

  When? _____

  Outcome? _____

- ☐ Recommended client advise police of every breach and advised client what constitutes a breach
- ☐ Explained basis of DVO including court process and procedure
- ☐ Explained respondent's options and outcomes at first mention
- ☐ Explained options as respondent in cross-applications
- ☐ Explained protection order conditions
- ☐ Does client wish to change any of the conditions of the TPO? Y / N
- ☐ Explained possible ouster order / return of property order
- ☐ Explained to client likelihood of others (including children) being included in DVO

☐ Does client wish to include children or anyone else in DVO or TPO?

If yes, who and why? _____

_____

_____

☐ Explained relevance of protection order re children's welfare and contact

☐ Recommended practical steps for own safety / safety plan eg change locks

☐ Referred to Domestic Violence service / police / IWSS for assistance

Where? _____

☐ Migration advice needed Y / N

Referred client to RAILS Y / N

☐ Recommended proceeding with application / getting / varying / defending / revoking DVO

☐ Merit to apply for legal aid to obtain / vary / defend / revoke DVO

☐ Recommended client apply for legal aid

Application given to client Y / N

Application received Y / N

☐ Resource material given to client

Children's matters

☐ Existing parenting plan/order/agreement Y / N sighted / not sighted

☐ Explained (a) best interests (b) childrens rights – objects and principles (c) parental responsibilities – shared/rebuttable (d) equal/substantial/significant time with parents (e) protecting children from harm

☐ Explained options for parenting plan/order and consent orders – court / mediation / counselling / LAQ conference

☐ Explained duty of disclosure and other obligations under the *Family Law Act 1975*

☐ Issues to consider – where children live/how they spend time with and communicate with parent/other issues/willingness and ability to facilitate contact with other parent/reconciliation

☐ Recommended keeping a parenting diary

☐ Recommended reporting child abuse / neglect to doctor / Department of Child Safety / police

☐ Recommended writing to other party re parenting proposal and keep copy of letter

☐ Merit to apply for legal aid for conference / court

☐ Completed solicitor / client assessment sheet for conference

☐ Contraventions – procedure/evidence/penalties

☐ Explained use of location orders and recovery orders by other party

☐ Explained options of location and recovery order for client (a) making own enquiries to locate child/ren (b) federal police watch list (c) child passport alert

☐ Merit to apply for legal aid for location / recovery order/s

☐ Role of the ICL

- [ ] Resource material given to client

Property married / de facto

- [ ] Time Limits – Married – 12 months after divorce
- [ ] Time Limits – De facto – two years after separation
- [ ] De facto – proof of existence of de facto relationship
- [ ] Contributions – how assessed – financial and non-financial
- [ ] Options for distribution of assets – superannuation
- [ ] Needs – children / health / earning capacity
- [ ] Grounds for seeking periodic / lump sum spousal maintenance Y / N
- [ ] Explained (a) severance of joint tenancy (b) caveat or injunction to preserve property
- [ ] Options for applying for sole occupancy of home
- [ ] Practical steps – closing / separating joint accounts and household bills and changing will – how
- [ ] Explained LAQ arbitration and gave client property arbitration information sheet Y / N
- [ ] Merit to apply for legal aid Y / N
- [ ] Explained costs – private solicitor to spec / LAQ retrospective contribution process
- [ ] Referred to family court for consent order kit and / or Relationships Australia / other for mediation

Divorce

- [ ] Time Limits – 12 months separation – effect of reconciliation
- [ ] Grounds – marriage broken down irretrievably / can live separately under one roof
- [ ] Proper arrangements made for children – especially minors
- [ ] Compulsory counselling if married under two years when apply
- [ ] Referred to Relationships Australia / Lifeline / other service for counselling and/or to FCCA for divorce kit and/or to community divorce scheme / divorce class / counter staff / FACT team
- [ ] Merit to apply for legal aid because

Child support / child maintenance

- [ ] Refer to the child support unit at Legal Aid Queensland for DNA testing / court proceedings in stage one or stage two cases / kit including for review or departure
- [ ] Refer to the Department of Human Services (Child Support) for assessment / collection / enforcement / review

B. Suggested trial directions – Childrens Court

Pursuant to Section 66(4) of the *Child Protection Act 1999*, the Childrens Court make the following directions:

1. The matter is listed for **final hearing** commencing at 9:00am on _____ for _____ day/s.

I DIRECT -

2. [**Option for leave to inspect subpoenas – choose one**] **

Subpoenas issued by any party are to be made returnable to the Court on _____ with leave granted to all legal representatives for the parties to inspect and copy any material produced under subpoena (subject to any further order of this Court).

OR

Subpoenas issued by any party are to be made returnable to the Court on _____. Upon joint application of the parties to the Court in writing, leave to inspect and copy any material produced under subpoena will be considered in chambers.

OR

Subpoenas issued by any party are to be made returnable to the Court on _____ and the matter will be mentioned on that date to hear any objections to subpoenas and consider whether parties will be granted leave to inspect and copy any material produced under subpoena.

d) The Director of Child Protection Litigation may provide a copy of the subpoena material to the chief executive.

e) The applicant shall file and serve all affidavits intended to be relied upon at the hearing by _____

f) The separate representative shall file and serve all affidavits intended to be relied upon at the hearing by _____.

g) The respondents shall file and serve all affidavits intended to be relied upon at the hearing by _____, failing which the application may be heard solely on the material filed by the applicant.

h) This matter is listed for **review mention** on _____ at _____.

i) At the review mention it is expected that:

1. Each party shall supply a list of documents and witnesses to be relied upon at the hearing.

2. Each party shall confirm which witnesses are required to be made available for cross-examination. If no indication is given by a party, then the hearing will proceed on the basis that the party did not require the witnesses to be made available for the hearing.

3. A party seeking to have a witness give evidence by way of telephone or video-link shall make the relevant application at this review mention.

4. A party may provide the Court with a written list of facts which are admitted by that party.

5. Each party is to ensure that an unmarked copy of all affidavits and statements to be relied upon at the hearing is available for the hearing.

6. Should the respondent fail to appear at the review mention, the matter may be finalised in their absence.

**** Consider if directions for disclosure are necessary pursuant to CCR r 58**