

## **SECTION 29A PANEL PRACTITIONER MANUAL**

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## 1. DEFINITIONS

In this Manual:

**“ATLAS”** VLA’s web-based system for lodging and tracking applications, extensions and invoices

**“Board”** means the Board of Directors of Victoria Legal Aid as defined in section 11 of the Legal Aid Act

**“CFN”** means a Compliance Failure Notice

**“CFN2”** means a Compliance Failure Notice 2

**“Days”** means calendar days.

**“Documentary proof of means”** means the material required by Part 5 of this Manual

**“Documentary proof of matter”** means the material required by Part 5 of this Manual

**“FRN”** means a File Review Notice

**“Independent Reviewer”** means that term as defined in section 2 of the Legal Aid Act

**“ISP”** means Internet Service Provider

**“Legal Aid Act”** means the *Legal Aid Act (Vic) 1978*

**“Legal Profession Act”** means the *Legal Profession Act (Vic) 2004*

**“Director”** means the Director or Acting Director of the Finance, Assignments and Business Division of VLA

**“Managing Director”** means the Managing Director or Acting Managing Director of VLA

**“Managing Practitioner”** means a qualified and experienced practitioner appointed to manage the conduct of the case

**“Manual”** means the document entitled Section 29A Panel Practitioner Manual as may be amended from time to time

**“NCN”** means Non-Compliance Notice

**“NR”** means a Notice to Remove a practitioner from a panel

**“NS”** means a Notice to Suspend a practitioner from a panel

**“Panel”** means a panel established under section 29A of the Legal Aid Act

**“Practitioner”** means a VLA practitioner and or a legal practitioner, firm or incorporated practitioner whose name has been included on the panel or has applied for such inclusion

**“Reconsideration”** means the practitioner’s right to request a reconsideration of a decision made by an officer of VLA

**“Representative”** means a lawyer appointed to represent a panel practitioner

**“Review”** means the practitioner’s right to request a review of a decision made by a VLA officer by an Independent Reviewer

**“RN”** means a Restitution Notice

**“VLA”** means Victoria Legal Aid

## **2A. GENERAL TERMS & CONDITIONS**

The general terms and conditions set out in this Manual represent the preconditions to inclusion on, and requirements for ongoing membership of the Panel. A practitioner who applies for inclusion on the Panel must agree to and continue to abide by these terms and conditions for the duration of the Panel membership.

### **2A.1 DURATION AND SELECTION CRITERIA**

- (a) The term of panel membership will be 5 years or as otherwise prescribed by the Board.
- (b) Appointment is to a specific Panel and membership of one Panel does not entitle a practitioner to automatic membership of other Panels.
- (c) It is a requirement for re-inclusion on the panel that a practitioner discloses any findings (not complaints) of unsatisfactory professional conduct or professional misconduct made since the appointment to the Panel, including findings made by the Legal Services Commission, the Law Institute of Victoria and the Victorian Civil and Administrative Tribunal.
- (d) VLA will take into consideration any removal or suspension proceedings, or proposed proceedings, from VLA's section 30 and /or section 29A panels.
- (e) Subject to provisions under (c) and (d) Practitioners will be re-included on a Panel at the expiration of the panel membership unless they elect not to be re-included. Re-inclusion will be in accordance with the terms and conditions of section 29A of the Act and this Manual.

### **2A.2 TERMS & CONDITIONS OF INCLUSION ON A PANEL**

The practitioner must:

- (a) demonstrate expertise in the class of matter for which the Panel is established.
- (b) meet the selection criteria set by VLA for inclusion.
- (c) maintain an effective representative to liaise with VLA, as required under Part 4.2(a) of this Manual.
- (d) hold and continue to hold a practising certificate.
- (e) maintain a place of business contactable by telephone during office hours.

- (f) possess and develop such information technology capacity as is reasonably required to conform to the lodgement, compliance and reporting requirements set out in this Manual or notified to practitioners from time to time, including but not limited to, holding an ISP account and accepting payment from VLA via electronic funds transfer.
- (g) conduct legally aided cases in accordance with the performance standards set out in Part 3 of this Manual.
- (h) Make recommendations as to the merits of clients' applications for assistance in accordance with:
  - (i) the relevant guidelines for assistance made by the Board under section 9 of the Legal Aid Act;
  - (ii) any written directions given by VLA as to the proper interpretation of those guidelines.
  - (iii) Part 5 of this Manual.
- (i) comply with the record keeping and reporting requirements set out in Part 4 of this Manual.
- (j) comply with the compliance standards and procedures set out in Part 6 of this Manual.
- (k) agree to be bound by the suspension and removal procedures set out in Part 7 of this Manual.
- (l) make legally aided files available to VLA Compliance Officers and external auditors, including arrangements for delivery at VLA's office when required.
- (m) accept all VLA referrals unless prevented by a conflict of interest or reasonable cause (eg illness, short staffing).
- (n) complete all VLA referrals unless prevented by a conflict of interest or reasonable cause (eg illness, short staffing) having given VLA and the client reasonable notice to effect a transfer where required.
- (o) participate in training, pilots and projects as reasonably required by VLA.
- (p) comply with any other terms and conditions that VLA may introduce from time to time.
- (q) render interim and final accounts within the period specified in Part 4 of this Manual or within a reasonable period and pay counsel's fees within a reasonable time of receiving payment from VLA.

- (r) not solicit the clients of other practitioners, including VLA's in-house practitioners.
- (s) not hold themselves out to clients, court officials or police as VLA solicitors.
- (t) not make statements to their clients, other practitioners, the court or members of the public, which denigrate VLA.
- (u) not make applications for assistance on behalf of their clients within 14 days or less of the date fixed for the next court event without reasonable grounds for the late application.
- (v) not refuse to provide to VLA information about any private funding arrangements that may have been agreed between themselves and an applicant for aid prior to the making of an application for aid.
- (w) Comply with the terms and conditions of Part 2B of this manual.

## **2B. TERMS AND CONDITIONS RELATING TO ATLAS**

A practitioner who uses ATLAS for the electronic submission of legal aid applications agrees to abide by these Conditions of Use.

### **2B.1 GENERAL**

The practitioner agrees:

- (a) In all but exceptional circumstances, to conduct all transactions (that otherwise would have traditionally taken place by using paper-based documentation) by using electronic versions of those documents.
- (b) In all respects, to conform to the requirements of the "Terms relating to Electronic Lodgement of Application", including requirements for passwords and systems administrators.

### **2B.2 RECORD KEEPING**

- (a) Practitioners must retain all those documents set out generally in the Section 29A Manual, including a signed application form, checklists, proof of means and proof of matter.
- (b) If a practitioner saves a document in an electronic format, it must be easily accessible to VLA's Compliance Officers.

### 3. PERFORMANCE STANDARDS

#### 3.1 ASSISTING CLIENTS

Practitioners must (where applicable):

- (a) adhere to their ethical and professional obligations both to the assisted person and to the court. A breach of any of the ethical or professional obligations as noted below is a breach of these performance standards. Where, at compliance check or otherwise, VLA becomes aware of a breach, VLA will take such action as it deems appropriate having regard to VLA's obligations to assisted persons, the court and the practitioner. Practitioners must comply with obligations:
  - (i) imposed under the *Legal Profession Act* and any rules or regulations made under that Act;
  - (ii) imposed by their recognised professional association;
  - (iii) recognised at law or in equity.
- (b) notify VLA immediately of any complaint the practitioner reasonably regards as serious, made against them to the Legal Services Commissioner or the Law Institute concerning the manner in which they are conducting, or have conducted, a legally aided case.
- (c) notify VLA immediately of any claim made against them for professional negligence where their professional indemnity insurer has accepted liability.
- (d) use their best endeavours to assist VLA to provide effective, economic and efficient legal aid services of a high quality and in a manner that dispels fear and distrust by (where applicable):
  - (i) conducting themselves professionally and courteously in their dealings with the prosecution, the courts, witnesses and practitioners for co-accused and other parties;
  - (ii) cooperating with the prosecution and practitioners for any co-accused or other party in a timely manner before a hearing to establish the issues which are in dispute and to be determined at the hearing;
  - (iii) focussing on the elements of the case which are likely to promote the best interests of the client to the exclusion of peripheral or insignificant issues;

- (iv) conducting the case in a manner that reasonably and properly serves the client and VLA;
  - (v) refraining from taking, accepting or demanding payment, or entering into a private costs agreement with a legally assisted client for legal work for which a grant of legal assistance would be available and which is directly connected with the case
  - (vi) refraining from asking a client to pay disbursements to other professionals for services for which a grant of legal assistance would be available and which is directly connected with the case
  - (vii) ensuring that at the conclusion of each stage of the matter for which legal assistance has been granted, the client has been informed of his or her right to seek an extension of assistance before entering into a private funding arrangement;
  - (viii) communicating with the client on a regular and timely basis to ensure that the client has an opportunity to provide full and proper instructions, is properly advised of his or her legal rights and responsibilities and is aware of the outcome and significance of each court event.
- (e) ensure that the Managing Practitioner appointed to conduct the case is appropriately qualified and experienced in the relevant area of law. Other partners, employees or agents of the practitioner firm may also undertake work on the case, however, the Managing Practitioner must:
- (i) retain personal control over the conduct of the case, including responsibility for making significant forensic decisions such as the number and nature of witnesses to be called or cross examined;
  - (ii) ensure that the client and the court are not disadvantaged by the delegation of the work;
  - (iii) ensure that the work is completed in accordance with these standards;
  - (iv) sign off on all recommendations made to VLA.
- (f) have regard to, and advise the client about the likely impact of VLA funding guidelines and fee ceilings.
- (g) in criminal matters, ensure that there have been reasonable representations and discussions with VLA prior to proceeding

with an application under Section 360A of the *Crimes Act* or any relevant State or Commonwealth confiscation legislation.

- (h) in family law matters use their best endeavours to seek a resolution of the dispute (using Family Dispute Resolution services as provided by Guideline 2 of Part 2, Appendix 2D of the Legal Aid Handbook and in accordance with the object of Part III, of the *Family Law Act* 1975 (Family Consultants)).
- (i) in matters dealt with under the *Children, Youth and Families Act* 2005, comply with their obligations under VLA's practice standards in acting for children and young people.

### **3.2 ASSISTING VLA**

Practitioners must:

- (a) comply with their obligations to VLA under the Legal Aid Act.
- (b) familiarise themselves with the provisions of, and act in accordance with, the Legal Aid Handbook and VLA's Notes on the Guidelines.
- (c) co-operate with VLA officers and assist them to do their jobs in a timely, effective and orderly manner.
- (d) treat VLA officers with appropriate respect, dignity and courtesy.
- (e) lodge all documents required by VLA in support of applications for assistance, reconsideration or review in sufficient time to reasonably permit the application to be processed in an efficient and orderly manner.
- (f) advise their client at the first interview as to the conditions of the grant of assistance and the level or type of service the practitioner will provide to them.
- (g) when briefing counsel or engaging the services of other professionals, have reasonable regard to counsel's or the professional's willingness and availability to provide services at the next stage of the matter for VLA's scale fees.
- (h) not engage expert witnesses to provide advice, reports or appear at court unless it is essential to the conduct of their client's case.
- (i) when engaging expert witnesses, ensure that they:
  - (i) select experts with demonstrated experience and competence in giving evidence in the specific area of law; and

- (ii) advise experts of the relevant fees fixed by VLA before the expert commences the work.
- (j) take all reasonable steps to ensure that their actions, whether on the instructions of a client or otherwise, do not impair VLA's capacity to recover costs secured by equitable charge or otherwise owed by the client to VLA.
- (k) immediately advise VLA of any information that comes to his or her attention that might affect the applicant's entitlement to legal assistance or obligation to pay a contribution to VLA.
- (l) where appropriate, seek a costs certificate and promptly do all things necessary to obtain payment of the costs.

### **3.3 CONFLICT OF INTEREST**

Practitioners must:

- (a) take reasonable steps to avoid a conflict of interest and must not act where a conflict exists.
- (b) not seek or accept a grant of legal assistance without thoroughly checking relevant records to ensure that there is no conflict of interest in the proposed grant.
- (c) keep a file note evidencing that they have undertaken a conflict check and that no conflict exists. This file note must be kept on the file.
- (d) if a perceived or actual conflict of interest arises during the course of a matter, notify VLA as soon as practicable and take all reasonably appropriate steps to resolve or end the conflict.

## **4. REPORTING AND RECORD KEEPING**

### **4.1 MANAGEMENT OF FILES**

Practitioners must:

- (a) have a system of file recording that can:
  - (i) provide separate lists of all open and closed legally aided files;
  - (ii) provide lists of files opened and/or closed from a specified date;

- (iii) be readily accessible by reference to the VLA reference number.
- (b) make reasonable efforts to maintain their files in an order that will allow VLA compliance officers, external auditors or another practitioner to quickly and easily understand the factual basis of the matter, the client's instructions, the stage the matter has reached and the further action required.
- (c) when legal assistance has been granted for two or more separate matters, maintain separate files (or separate folders within the client file) for each matter, either keeping generic material (such as proof of means) on both files or cross referencing files for easy location of documentation. All documentation relevant to a specific grant of assistance must be clearly identifiable.
- (d) make all reasonable efforts to ensure that files contain a complete, readily identifiable record of relevant events, documents and work, and that all checklists and specific supporting documents reasonably required by VLA are attached to the file.
- (e) before notifying VLA that a matter has finalised, review the file and ensure that all necessary steps are or have been taken, including (where appropriate):
  - (i) disbursing any trust monies to the client or VLA in accordance with the client's written instructions or the terms of the grant of assistance or otherwise dealt with in accordance with the *Legal Profession Act* and rules governing solicitors' trust accounts;
  - (ii) making any application to the Appeal Costs Board for costs reimbursement from the Appeal Costs Fund quoting the VLA reference number;
  - (iii) providing VLA with counsel's advice as to the prospects of an appeal.
- (f) as reasonably required by VLA, use information and communications technology such as ATLAS.
- (g) keep their files secured.
- (h) keep their files for the prescribed statutory period.

## 4.2 REPORTING TO VLA

Practitioners must:

- (a) appoint a practitioner as a Representative to act as principal contact for VLA and VLA's Compliance Officers.
- (b) in the case of practitioners with more than one office on the Panel, nominate a Representative for each office. The same individual may be nominated for more than one office.
- (c) ensure that the Representative has sufficient standing within the practitioner's firm to carry out any corrective action arising out of the compliance checks under Part 6 of this Manual.
- (d) notify VLA as soon as practicable when there is any change of Representative.
- (e) make all reasonable efforts to ensure that the Representative is available during any advance notice compliance checks conducted by VLA.
- (f) provide all information sought by VLA on checklists and pro-forma account forms.
- (g) submit requests for extensions of assistance and interim accounts promptly.
- (h) submit final accounts and a final report within 30 days of completion of the matter for which legal assistance was provided.
- (i) provide all information reasonably sought by VLA in a timely manner.
- (j) keep VLA informed of all matters affecting:
  - (i) the assisted person's ongoing eligibility for legal assistance, including any information provided to the court that differs from that provided to VLA;
  - (ii) VLA's right to recover costs by way of Appeal Costs Fund certificates and costs orders;
  - (iii) VLA's rights as a secured creditor where the assisted person has provided an equitable charge over property;
  - (iv) VLA's reputation and standing in the courts, including any criticisms made of VLA or the practitioner by courts, practitioners or other parties.

## **5. MERIT AND CERTIFICATION OF DOCUMENTARY PROOFS**

### **5.1 PRACTITIONER OBLIGATIONS**

Practitioners are responsible for:

- (a) assessing the merits of their client's initial application for aid and any subsequent extensions by using all available documentation/information and recommending to VLA whether or not the application meets the requirements of the relevant guideline.
- (b) obtaining and retaining on file current:
  - (i) documentary proof of means; and
  - (ii) documentary proof of matter.
- (c) certifying to VLA the existence of that documentation and its substantiation of the information provided to VLA.

### **5.2 DOCUMENTARY PROOF OF MEANS**

5.2.1 Before certifying that they have documentary proof of means, practitioners must:

- (a) obtain all current documentary proof of means, including but not limited to (where applicable) government benefit card, current payslips, bank statements and any other documents evidencing the client's income, assets and liabilities.
- (b) compare the information contained in the documentary proof of means with the information provided by the client on the application form;
- (c) satisfy themselves that the documentary proof of means substantiates the information provided on the application form.
- (d) Retain the documentary proof of means on file.

5.2.2 Practitioners are not required to conduct an assessment of a client's financial eligibility for assistance, nor to make any recommendations to VLA about the client's financial eligibility.

5.2.3 Before an account is rendered, practitioners must review the file to confirm that documentary proof of means is on file. If the proof is not on file, the practitioner may choose not to render a bill but must advise VLA. The practitioner cannot then render a bill to the client.

### **5.3 DOCUMENTARY PROOF OF THE MATTER**

Before certifying that they have documentary proof of matter, practitioners must:

- (a) obtain where appropriate and retain on file copies of all relevant court documents including but not limited to, charge sheets, originating process or other initiating documents, affidavits, witness statements, copy exhibits, and notices of hearing;
- (b) retain on file copies of documents relating to and substantiating disbursements paid by VLA including but not limited to, expert reports, service fees and interpreter fees.
- (c) retain on file proof of attendances for events paid by VLA including but not limited to, court appearances and RDM conferences.
- (d) Satisfy themselves that the documentary proof of matter relates to the current matter for which assistance is sought.

### **5.4 MERITS & GUIDELINES ASSESSMENT**

In conducting a merits and guideline assessment, practitioners must:

- (a) obtain all documentation and information reasonably necessary for the forming of an opinion as to the merits of a matter;
- (b) properly apply the relevant guideline adopted by the Board under section 9 of the Legal Aid Act or set by the Commonwealth and all applicable merits tests, including directions given by VLA as to the proper interpretation of those guidelines and tests.

### **5.5 RECOMMENDATION TO VLA**

5.5.1 Where practitioners make a recommendation that assistance be granted, they must:

- (a) inform the client of the nature and extent of the recommendation and document those reasons on the file;
- (b) complete and sign the appropriate checklist and forward it to VLA together with a completed application, signed by the client;
- (c) keep all documents relied upon in the making of the recommendation on the file, including copies of all material forwarded to VLA.

- 5.5.2 If the client decides not to proceed with the application for legal assistance before it is lodged with VLA, no further action by the practitioner is required.
- 5.5.3 Where practitioners make a recommendation that assistance should not be granted, they must:
- (a) inform the client of the nature and extent of the recommendation;
  - (b) seek the client's instructions as to whether the client wishes the application to be lodged notwithstanding the recommendation. If the applicant instructs a practitioner to lodge the application, the practitioner must:
    - (i) document on file the reasons for the recommendation;
    - (ii) complete the appropriate checklist and forward it to VLA;
    - (iii) provide to VLA any documents reasonably required by VLA for the purposes of reconsideration or review.

## **6. COMPLIANCE PROCEDURE**

### **6.1 COMPLIANCE METHODS**

6.1.1 VLA will monitor practitioners compliance by way of compliance checks. The compliance checks will, at VLA's discretion, be conducted:

- (a) at regular intervals;
- (b) either at the practitioners office or at VLA;
- (c) by giving the practitioner reasonable notice of the files subject to a compliance check.

6.1.2 VLA reserves the right to conduct a compliance check without giving prior notice.

### **6.2 COMPLIANCE NOTICES**

Where, during a compliance check or otherwise, VLA identifies that a practitioner has failed to comply with its requirements, Compliance Officers may issue the following notices:

- (a) File Review Notice (FRN);
- (b) Non-Compliance Notice (NCN);
- (c) Restitution Notice (RN);
- (d) Compliance Failure Notice (CFN); and
- (e) Compliance Failure Notice 2 (CFN2).

### **6.3 IDENTIFICATION OF BREACHES**

6.3.1 In determining what level of notice to issue, VLA will have regard to:

- (a) the nature of the breach;
- (b) the seriousness of the breach;
- (c) the consequences flowing from the breach, including the risk of detriment to the assisted person and the Legal Aid Fund;
- (d) the need for deterrence; and
- (e) any explanation put forward by the practitioner.

6.3.2 All compliance notices must contain details of the nature of the breach, the remedial action required, the remedies available to practitioners, and the time period within which that action must be implemented.

### **6.4 RECORDING & REQUIREMENTS OF NOTICES**

#### **6.4.1 File Review Notice**

An FRN will be issued:

- (i) to educate practitioners about their obligations and prevent serious breaches;
- (ii) to seek further information which will enable a proper determination;
- (iii) where no costs have been incurred to VLA and the breach is relatively minor in nature and consequence.

An FRN is not formally recorded as a breach against the practitioner. However, VLA will keep a copy of the FRN and may take it into account when deciding what action to take on a subsequent breach.

#### 6.4.2 Non-Compliance Notice

An NCN will be formally recorded as a breach. It may require the practitioner to:

- (i) provide no remedial action but note the issue.
- (ii) provide no remedial action but to observe an RN;
- (iii) provide remedial action to avoid an RN being issued.

Where the remedial action is satisfied within the specified time, the NCN will stand but no further action will be taken. Where the remedial action is not satisfied within the specified time an RN and / or CFN may be issued.

#### 6.4.3 Restitution Notice

An RN will impose a liability on the practitioner to make restitution not exceeding the amount expended on the file. An RN may be issued where:

- (a) the practitioner has failed to obtain and retain documentary proof of means;
- (b) the practitioner has failed to obtain and retain documentary proof of matter;
- (c) amounts expended where not properly authorised to be spent or exceed the prescribed fees;
- (d) VLA is not satisfied that the grant of assistance was properly made;

#### 6.4.4 Compliance Failure Notice

A CFN may be issued where

- a) the practitioner has failed to attend remedial action; or
- b) the breach is particularly serious; or
- c) the number of breaches gives rise to concerns.

#### 6.4.5 Compliance Failure Notice 2

A CFN2 may be issued where

- a) the practitioner has failed to attend remedial action on a CFN;
- b) the breach is particularly serious;
- c) the number of breaches gives rise to concerns

Where a CFN2 is issued or after failure to comply with a CFN2 consideration will be given to issuing a NS or NR pursuant to Part 7 of this Manual (Notices to remove or suspend).

## **6.5 REMEDIES - COMPLIANCE NOTICES**

### **6.5.1 File Review Notice**

Practitioners cannot seek reconsideration or review of the decision to issue an FRN. It is not recorded as a breach. No further action will be taken if remedial action is completed satisfactorily.

### **6.5.2 Non-Compliance Notice**

Practitioners who receive an NCN:

- (a) do not have a right to reconsideration and review for breaches arising from Part 2, 3, 4 and sections 5.2 and 5.3 of Part 5 of this Manual.
- (b) have a right of reconsideration or review where the practitioner asserts that the guidelines and/ or the merits test were incorrectly applied (breach of Part 5.4(b) of this Manual) only if an RN has also been issued with respect to that breach;
  - (i) practitioners seeking a reconsideration of a decision to issue an NCN must set out all relevant material on which they rely, including both factual matters and submissions. The request must be made in writing and addressed to the original decision maker. The material must reach the original decision maker no more than 14 days after the date of the NCN.
  - (ii) When reconsidering an NCN the original decision maker will take into account all available information provided by the practitioner. If the original decision maker decides not to reverse his/her decision, the matter will be referred to another Compliance Officer for reconsideration. VLA must notify the practitioner of the result of the reconsideration process within a reasonable time.
  - (iii) VLA may request the practitioner to forward the file to VLA to assist reconsideration.
  - (iv) Requests for review by Independent Reviewer must be made in writing within 21 days of the date of the reconsideration.
  - (v) An Independent Reviewer may confirm, vary or reverse a decision.

- (c) have a right to request a withdrawal of the NCN on the basis that the NCN was issued in error.
  - (i) practitioners seeking the withdrawal of an NCN must set out all relevant material on which they rely, including both factual matters and submissions. The request must be made in writing and addressed to the original decision maker. The material must reach the original decision maker no more than 14 days after the date of the NCN.
  - (ii) When considering withdrawal of an NCN the original decision maker will take into account all available information provided by the practitioner. If the original decision maker decides not to reverse his/her decision, the matter will be referred to another Compliance Officer for consideration. VLA must notify the practitioner of the outcome within a reasonable time.
  - (iii) VLA may request the practitioner to forward the file to VLA to assist consideration of the request to withdraw the NCN.
  - (iv) There is no right to review in these instances.

#### 6.5.3 Restitution Notice

Practitioners who receive an RN:

- (a) do not have a right to review for breaches arising from Part 2, 3, 4 and sections 5.2 and 5.3 of Part 5 of this Manual.
- (b) have a right of reconsideration or review where the practitioner asserts that the guidelines and / or the merits test were incorrectly applied (breach of Part 5.4(b) of this Manual).
  - (i) Practitioners seeking reconsideration or review of a decision to issue an RN must set out all relevant material on which they rely, including both factual matters and submissions. The request must be made in writing and addressed to the original decision maker. The material must reach the original decision maker no more than 14 days after the date of the RN.
  - (ii) When reconsidering an RN the original decision maker will take into account all available information provided by the practitioner. If the

original decision maker decides not to reverse his/her decision, the matter will be referred to another Compliance Officer for reconsideration. VLA must notify the practitioner of the result of the reconsideration process within a reasonable time.

- (iii) VLA may request the practitioner to forward the file to VLA to assist reconsideration.
  - (iv) Requests for review by Independent Reviewer must be made in writing within 21 days of the date of the reconsideration.
  - (v) An Independent Reviewer may confirm, vary or reverse a decision.
- (c) have a right to request a withdrawal of the RN on the basis that the RN was issued in error or that all remedial action requested has been completed.
- (i) Practitioners seeking withdrawal of an RN must set out all relevant material on which they rely, including both factual matters and submissions. The request must be made in writing and addressed to the original decision maker. The material must reach the original decision maker no more than 14 days after the date of the RN.
  - (ii) When considering the request to withdraw an RN the original decision maker will take into account all available information provided by the practitioner. If the original decision maker decides not to reverse his/her decision, the matter will be referred to another Compliance Officer for consideration. VLA must notify the practitioner of the outcome within a reasonable time.
  - (iii) VLA may request the practitioner to forward the file to VLA to assist consideration of the request to withdraw the RN.
  - (iv) There is no right to review in these instances.

#### 6.5.4 Compliance Failure Notice/Compliance Failure Notice 2

Practitioners who receive a CFN/CFN2:

- (a) have a right of reconsideration, however they cannot request reconsideration merely because the practitioner has since remedied a breach by remedial action required by the NCN or CFN;

- (b) do not have a right of review for breaches arising from Part 2, 3, 4 and sections 5.2 and 5.3 of Part 5 of this Manual.
- (c) have a right of review where the practitioner asserts that the guidelines or the merits test have been incorrectly applied (breach arising from Part 5.4(b) of this Manual).
  - (i) Practitioners seeking reconsideration or review of a decision to issue a CFN/CFN2 must set out all relevant material on which they rely, including both factual matters and submissions. The request must be made in writing and addressed to the Compliance Coordinator. The material must reach the Compliance Coordinator no more than 14 days after the date of the CFN/CFN2.
  - (ii) when reconsidering a CFN/CFN2 the Compliance Coordinator or Performance & Reporting Manager will take into account all available information provided by the original decision maker and the Practitioner. Before making a decision, the reconsidering officer may also seek further information from the Practitioner, the original decision maker or any other relevant party. VLA must notify the practitioner of the result of the reconsideration process within a reasonable time.
  - (iii) VLA may request the practitioner to forward the file to VLA to assist reconsideration.
  - (iv) the Compliance Coordinator's or Performance & Reporting Manager's decision may confirm, vary or reverse the decision.
  - (v) requests for review by Independent Reviewer must be made in writing within 21 days of the date of the reconsideration.
  - (vi) An Independent Reviewer may confirm, vary or reverse the decision.

## **7. REMOVAL AND SUSPENSION FROM THE PANEL**

### **7.1 TYPES OF NOTICES**

#### **7.1.1 VLA may issue the following:**

- (a) Notice to Suspend (NS); or
- (b) Notice to Remove (NR).

A notice to remove may be either a:

- (i) Notice to Remove summarily; or
- (ii) Notice to Remove on a date prescribed.

7.1.2 Where a NS or NR is issued to a practitioner in respect of one Panel, the membership of other Panels will be subject to the same notice.

## **7.2 NOTICE TO SUSPEND**

7.2.1 The Managing Director may serve a NS, effective immediately, where VLA becomes aware of information which reasonably indicates that the conduct or circumstances of a practitioner has caused, or will cause detriment to:

- (i) VLA or its reputation;
- (ii) the Legal Aid Fund; or
- (iii) any assisted person.

7.2.2 VLA may serve a NS where VLA becomes aware that:

- (i) a practitioner is charged with any criminal offence;
- (ii) a practitioner becomes bankrupt;
- (iii) a practitioner is found guilty by VCAT of unsatisfactory professional conduct or professional misconduct (within the meaning of Division 2 of Part 4.4 of the *Legal Profession Act 2004*);
- (iv) a court, tribunal or professional body has voiced what VLA reasonably regards as serious criticisms of a practitioner's conduct; or
- (v) any other serious conduct which VLA considers requires investigation.

7.2.3 The NS must provide the:

- (a) basis on which the determination to suspend has been made;
- (b) scope of the suspension. An NS may prevent a practitioner from:
  - (i) being allocated further grants of assistance;
  - (ii) continuing to act in current grants of assistance; or
  - (iii) making merit and guideline recommendations in applications for assistance.

- (c) practitioner's right to make submissions on the matters that have led to the NS, which must be submitted in writing addressed to the Director within 14 days of the date of the NS; and
  - (d) date on which the NS will take effect.
- 7.2.4 VLA must commence an investigation into the allegations within 28 days of the date of the NS.
- 7.2.5 Within 60 days of the commencement of the investigation, VLA must:
  - (i) issue a formal reprimand;
  - (ii) issue a NR;
  - (iii) undertake other further corrective action;
  - (iv) reinstate the practitioner to the Panel if the investigation does not substantiate VLA's concerns, and no further action is to be taken; or.
  - (v) extend the investigation period by up to 28 days.

### **7.3 NOTICE TO REMOVE**

- 7.3.1 Practitioners may be removed from a Panel if any of the following occur:
  - (a) the practitioner ceases to hold a practising certificate.
  - (b) information supplied by the practitioner in support of their appointment to the Panel is found to be substantially and relevantly inaccurate or false.
  - (c) the practitioner is found:
    - (i) liable for negligence by a court;
    - (ii) guilty of unsatisfactory professional conduct or professional misconduct by the VCAT, within the meaning of Division 2 of Part 4.4 of the *Legal Profession Act 2004*; or
    - (iii) guilty of any offence of which an element is dishonesty.
  - (d) the practitioner is a firm or incorporated practitioner, and there is no individual practitioner who was nominated in the application for appointment to the Panel remaining with the firm or employed by the incorporated practitioner.

- (e) the practitioner has committed a serious breach of the terms and conditions of Panel membership. A breach of Panel membership will be regarded as serious where, in the Managing Director's opinion, the breach:
  - (i) posed a risk of detriment to the Legal Aid Fund;
  - (ii) was a breach of Part 3 of this Manual that had the potential to adversely affect the outcome of a client's case;
  - (iii) involved dishonesty or improper conduct in a professional capacity;
  - (iv) had the potential to adversely affect VLA's reputation; or
  - (v) led to the court being deceived or, intentionally or otherwise, misled as to the true status of VLA's funding determinations regarding a particular applicant or class of applicants.
- (f) the practitioner has failed to comply with the terms of two CFNs.
- (g) the practitioner has failed to comply with a CFN2.
- (h) the practitioner has a history of breaches of Panel conditions that, in the reasonable opinion of the Managing Director, have imposed an unreasonable cost burden on VLA.
- (i) the personal or professional circumstances of the practitioner are such that, in the opinion of the Managing Director, they pose an unacceptable risk to the Legal Aid Fund.
- (j) the practitioner has been removed from another s.29A Panel or VLA has commenced removal procedures in relation to the practitioner's membership of another s.29A Panel.
- (k) the practitioner requests, in writing to the Compliance Coordinator, to be removed from the Panel.

7.3.2 The NR must inform the practitioner of:

- (a) the basis on which the determination to remove the practitioner has been made;
- (b) the duration of removal;

- (c) what, if any, legally aided matters the practitioner may continue to conduct notwithstanding the removal;
- (d) the date on which the removal will take effect; and
- (e) the practitioner's right to Show Cause why the removal should not occur.

## **7.4 PRACTITIONER TO SHOW CAUSE**

7.4.1 A practitioner who has been served with a NR may seek to Show Cause why the removal should not take place. A practitioner seeking to Show Cause must set out all relevant material on which they rely, including both factual matters and submissions, in writing addressed to the Director.

- (a) all relevant material must reach the Director within 14 days of the date of the NR.
- (b) where the material raises new issues, VLA is entitled to request further and better particulars on those issues.
  - i) VLA will serve on the practitioner a request for further and better particulars, and must serve this request on the practitioner within 14 days of receiving the relevant materials.
  - ii) Any response by the practitioner to the request for particulars must reach the Director within 14 days of the request for further and better particulars.

7.4.2 On receipt of the Show Cause submission, VLA must forward the documentation to the Chairperson of the panel of Independent Reviewers within 14 days of receiving the relevant materials or, where applicable, within 14 days of receiving the response to the request for further and better particulars.

7.4.3 The Chairperson of the panel of Independent Reviewers must appoint an Independent Reviewer who will be provided with:

- (i) all information and documentation that was before the Director and/or the Managing Director at the time the NR was issued to determine the matter;
- (ii) all the written material lodged by the practitioner in support of the application to Show Cause; and
- (iii) Where applicable, all further and better particulars from the practitioner and VLA's further submission.

- 7.4.4 The Independent Reviewer determining the application to Show Cause shall be bound by the rules of procedural fairness.
- 7.4.5 The practitioner's application to Show Cause will be determined on the documentation provided and neither the practitioner nor VLA has the right to an oral hearing. Where the Independent Reviewer requires clarification of any fact or issue, he or she shall seek that clarification in writing from the party concerned. A copy of the request for clarification must be provided to both parties. A response to the request must be provided to the Independent Reviewer and both parties within 14 days of the date of the request. Both parties will then have a further 14 days to make any further submissions to the Independent Reviewer.
- 7.4.6 The practitioner's application to Show Cause will be determined within 28 days of the Independent Reviewer receiving the information referred to in 7.4.3. This period will be extended if clarification is sought (as referred to in 7.4.5) by 28 days after the 14 days allowed for further responses expire.
- 7.4.7 The Independent Reviewer shall provide a short written statement of reasons and may:
  - (a) confirm VLA's decision, in which case the removal shall occur immediately;
  - (b) reverse VLA's decision;
  - (c) reverse VLA's decision with a recommendation to issue a formal reprimand; or
  - (d) vary VLA's decision to impose different conditions on the length and scope of the removal.
- 7.4.8 The decision of the Independent Reviewer is final and binding on both VLA and the practitioner.

## **7.5 MATERIAL CHANGE IN CIRCUMSTANCES**

- 7.5.1 Where a practitioner has been removed from a Panel, he, she or it may seek reinstatement if there has been a material change in the circumstances that led to the removal.
- 7.5.2 A practitioner who has been removed because of a pending criminal investigation or after a criminal conviction is entitled to seek reinstatement after an acquittal or where the conviction is overturned on appeal. In such circumstances VLA may not refuse the reinstatement unless satisfied on reasonable grounds that the

provisions of section 7 of the Legal Aid Act require that the practitioner remain excluded from the Panel.

- 7.5.3 Practitioners may seek reinstatement to the Panel after the period of removal expires. In deciding whether to re-admit the practitioner to a Panel VLA may take into account any information and circumstances VLA considers relevant.

## **8. COMPLAINTS AND FEEDBACK PROCESS**

- 8.1 VLA's aim is to resolve complaints quickly, fairly and without prejudice. A complaint about VLA's service or a VLA staff member should be forwarded to VLA's Investigations Coordinator either by phone, email to [clientcomplaint@vla.vic.gov.au](mailto:clientcomplaint@vla.vic.gov.au) or in writing.
- 8.2 If the complaint concerns the professional conduct of a VLA lawyer or a VLA funded private lawyer, the complaint may be referred to the professional standards body at the Law Institute of Victoria or the Legal Services Commissioner.
- 8.3 If the complaint refers to VLA's compliance with proper procedures under the Act, it can also be directed to the Ombudsman.
- 8.4 Further information about VLA's complaints handling and feedback policy can be found in the Client Service Charter or by contacting VLA's Investigations Coordinator on (03) 9606 5256 or 1800 677 402 (for Victorian country callers).