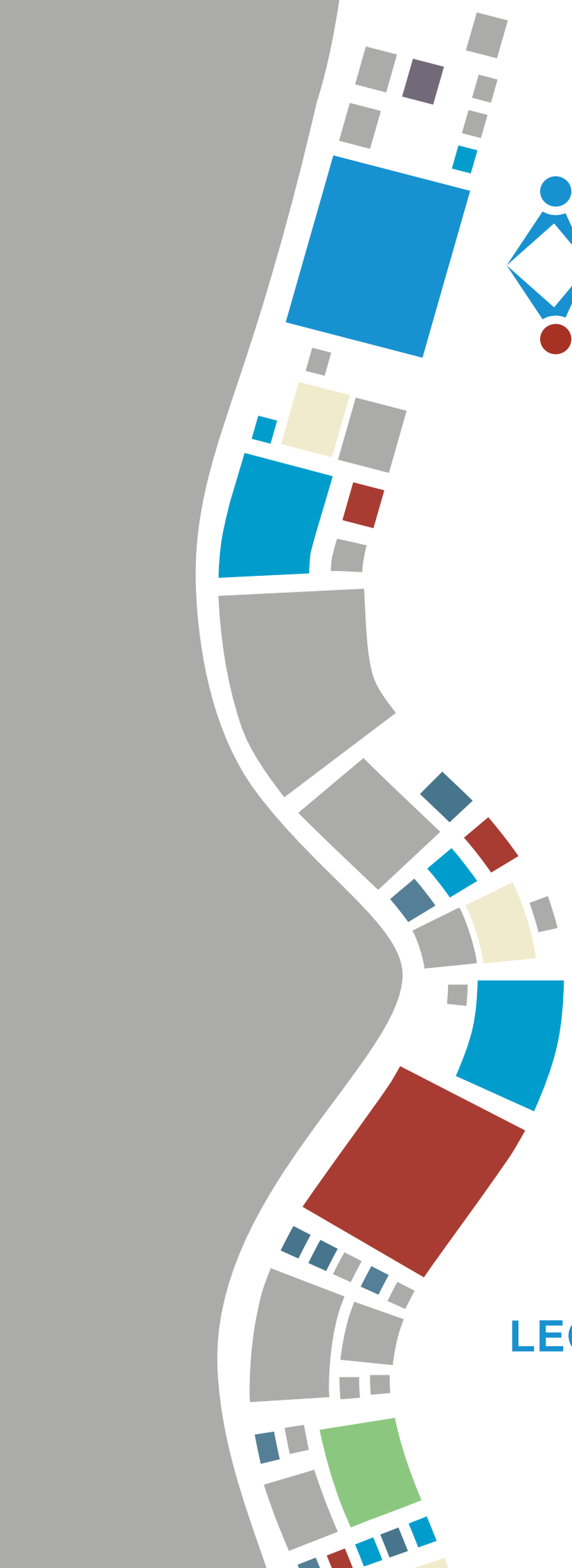

Legal Aid
South Africa

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LEGAL AID MANUAL

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How to use this Legal Aid Manual

This Legal Aid Manual should be used to determine procedures in terms of which applications for legal aid are administered, the systems and methods whereby legal aid is delivered, procedures relevant to private legal practitioners and administrative matters which are necessary for the effective function of Legal Aid South Africa.

It should be read in conjunction with the Legal Aid South Africa Act 39 of 2014 and the Regulations to the Act.

Why a Manual in plain language?

The Legal Aid Manual is written in *plain language.* This means it is easier to read and understand by simplifying and explaining words and by structuring and designing it in a way that is more user-friendly. The meaning of this Manual, including its explanations of useful words, should be understood, interpreted and read in this plain language spirit. The exact meaning of these useful words may vary according to the context.

Who is this Manual for?

- Persons receiving legal aid applications, including agent legal aid officers, administrative officers, Paralegals, Candidate Attorneys and legal practitioners working in Legal Aid South Africa offices, Magistrate's Court Offices and Justice Centres.
- Legal practitioners representing legal aid clients in our justice system.
- Paralegals advising and assisting people in getting and using legal aid.
- Community structures, unions and non-governmental organisations representing the interests of members and clients.
- Individuals needing legal representation and assistance to enforce their legal rights under the Constitution and other laws of South Africa.
- Members of Parliament and institutions representing practitioners.

What does the Manual cover?

The Manual covers the procedures relating to the administration of legal aid, the mixed model delivery system of legal aid, the requirements and criteria for accreditation of private legal practitioners (including fees and disbursements payable to such practitioners) and any other matter related to the effective and efficient functioning of legal aid.

Abbreviations and Acronyms

This is an alphabetical list of:

- Abbreviations like CEO, and
- Acronyms like ESTA that we use in this Legal Aid Manual.

AIDS	Acquired Immune Deficiency Syndrome
BBBEE	Broad Based Black Economic Empowerment
CCMA	Commission for Conciliation, Mediation and Arbitration
CCMC	Constitutional Case Management Committee
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CLE	Chief Legal Executive
CRLR	Commission for the Restitution of Land Rights
DCS	Department of Correctional Services
District Court	District Magistrate's Court
DLAO	Designated Legal Administration Officer
DoJ&CD	Department of Justice and Constitutional Development
DPP	Director of Public Prosecutions
ESTA	Extension of Security of Tenure Act of 1997
HCUM	High Court Unit Manager
HIV	Human lmmunodeficiency Virus
HRE	Human Resources Executive
IAE	Internal Audit Executive
IT	Information Technology
JCE	Justice Centre Executive
LCC	Land Claims Court
LE	Legal Executive
LSTC	Legal Services Technical Committee
NGO	Non-Governmental Organisation
NOE	National Operations Executive
PIE	Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998
Regional Court	Magistrate's Court for a Regional Division
ROE	Regional Operations Executive
SARS	South African Revenue Service
SILA	Senior Impact Litigation Attorney
The Act	The Legal Aid South Africa Act 39 of 2014
The Board	The governing Board of Legal Aid South Africa
The Constitution	The Constitution of the Republic of South Africa, 1996
The Hague Convention	The Hague Convention on the Civil Aspects of International Child Abduction Act of 1996
v	Versus (in names of court cases)
VAT	Value Added Tax

Explanation of useful words

This is an alphabetical list to explain words the first time they appear in a Chapter of this Legal Aid Manual. These are:

- Words used with specific meaning for the purposes of administration of legal aid, e.g. 'Co-operation Partner', 'Judicare'.
- Legal and technical words to assist in the reading and understanding of this Manual, e.g. 'compliance', 'justiciable', 'prima facie'.

Please note:

- The exact meaning of these useful words may vary according to the context.
- We italicise words in the explanations when these words appear elsewhere in this list, and also italicise Latin expressions.

Access to justice
Being able to claim rights and *enforce obligations* in our justice system.

Accountability
Having to report and be answerable for your policies, decisions and actions.

Accredited
Recognised, e.g. accredited *legal practitioners* under Legal Aid South Africa's *Judicare Accreditation System.*

Accused
Person formally charged by the police with a criminal offence.

Affidavit
A sworn statement made under oath.

Afford/Affordability
Whether a person can afford or pay for legal representation depends on the person's means and the costs of the legal representation.

Agent legal aid officers
Employees of the Department of Justice and Constitutional Development permitted to receive legal aid applications at Magistrate's Court Offices and to send these applications for a decision to the nearest Legal Aid South Africa *Justice Centre*.

Appellant
A person noting an appeal to a higher court and has to consider whether an original judgment is correct, based on the facts or law of the case.

Applicant
A person applying, i.e. making an application for legal assistance that Legal Aid South Africa may provide.

Applicable to/Apply to/Applies to
Is relevant to or is effective, e.g. 'the policy applies to poor people'.

Arbitration
When an independent person decides on the best and most effective way to resolve a dispute, e.g. between Legal Aid South Africa and a *legal practitioner* over a legal aid account.

Assets
Your physical and non-material (non-physical) possessions, e.g. house (non-physical possession), clothes (physical possession), claim against a debtor, copyright to a book you wrote.

Asylum
When foreigners qualify to stay in another country as refugees.

Asylum seeker
Person applying for *Asylum*.

Attorney and client costs
The legal costs between an attorney and client for all the work done on a case, e.g. the cost of a consultation.

Balance of probabilities
Legal test to decide whether you have proved a civil case – also used in legal aid applications to decide if you qualify for legal aid in civil cases. This means balancing all relevant and reasonable factors to arrive at a decision whether to grant legal aid or not on the basis that there is a good chance that you will succeed in your case.

Benefit
The portion of a court judgment or case settlement that is due to Legal Aid South Africa and which a legal aid client gets from the judgment or settlement.

Best practices
Prior examples or standards to follow.

Bill of costs
The *legal practitioner's* account to Legal Aid South Africa for payment by the unsuccessful *litigant* to a successful legal aid *litigant*.

Broad-Based Black Economic Empowerment Policy
Legal Aid South Africa's policy to promote B-BBEE as part of its *Judicare Accreditation System*.

Breach
Breaking or not following a law, code or agreement, e.g. not *complying* with a legal aid instruction, or a breach of a contract.

Candidate Attorney
A person undergoing practical vocational training with a view to being admitted and enrolled as an attorney.

Capital
Assets and money used to start a business or invested to make money.

Cede
Legally give up or transfer your rights, e.g. cede ownership of land or cede the recovery of costs in a legal aid case to Legal Aid South Africa.

Central Authority
The State, represented by the Family Advocate, in international child abduction cases under the Hague Convention.

Certificate *Probabilis Causa*
Certificate signed by a *legal practitioner* accepting a legal aid instruction.

Claimant
A person making a claim.

Class action
When a group of affected people bring a case jointly or on behalf of a wider group of people that may benefit from the outcome.

Common law offences
Common laws are not made by Parliament, but have been part of our legal system for centuries. Offences relating to this includes murder, rape, theft, assault etcetera.

Complainant
A person making a complaint.

Compliance/Comply
Obey and work in accordance with laws, policies, procedures and contracts, e.g. comply with this Manual.

Condonation
Asking to be legally excused for having to make a late application, e.g. for leave to appeal. Good reasons must be given for the late application.

Confidential/Confidentiality
Information that is personal or private and should not be publicly disclosed.

Conflict of interest
When there are competing interests or needs, e.g. Legal Aid South Africa may need to instruct different *legal practitioners* to represent the co-accused in a criminal case.

Consent
Agree to or agreement.

Contingency fee
When legal practitioners are paid only if they win a case.

Co-operation Agreement
Agreement between Legal Aid South Africa and an NGO partner or University Law Clinic to deliver legal services of a particular kind or in a defined region/area of South Africa.

Co-operation Agreements Policy
Legal Aid South Africa's policy governing *Co-operation Agreements.*

Co-operation Partner
Partners to Legal Aid South Africa under *Co-operation Agreements,* such as NGOs.

Correspondent
Legal practitioner in another city or town who assists with a task in a case.

Criteria
Factors used to decide something, e.g. whether or not to grant legal aid, the seriousness of the case and the ***applicant's*** financial position.

Curator *ad litem*
Person appointed by the court to represent a person who lacks *legal capacity,* e.g. a minor child.

Curator *bonis*
Person appointed by the court to assist a person incapable of managing his/her own affairs.

Damages
Legal compensation for injury or harm caused by someone's unlawful actions.

Deemed
Regarded or treated as by a law, policy or procedure, e.g. the beneficiary of a trust is deemed to own the *assets* of the trust.

Default judgment
Judgment taken against someone in court when they do not arrive or have not responded to a claim.

Defendant
A person who has to answer a claim in a civil case.

Disbursements
Expenses of a legal practitioner in a case, e.g. telephone calls, photocopies.

Discretion
When you have the power to do or not to do something, e.g. a JCE's discretion to grant legal aid in certain kinds of cases. The exercise of discretion must be reasonable and lawful.

District Court
An ordinary Magistrate's Court.

Domicilium citandi et executandi
Official address for receiving all legal documents.

Due diligence procedures
Performance and *compliance* standards and requirements that Legal Aid South Africa may ask *Co-operation Partners* to meet before concluding or renewing a *Co-operation Agreement.*

Enforce/Enforcement
Legally implementing or making effective.

Enshrined
When a principle, value or right is supported and included in a document or process, e.g. the idea of equality is enshrined in the Bill of Rights in our Constitution.

Entitled to
Have a right to, e.g. when you are entitled to legal aid under the Constitution.

Equality Courts
When a Magistrate's Court or a High Court hear cases under the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

Exception
Something that does not follow a general rule, policy or procedure.

Exclusionary list
Legal Aid South Africa's list of *legal practitioners* who may not be instructed in legal aid *matters.*

Exempt/Exempted/Exemption
When you are excused from doing something

Express/Expressly
Specifically stated or set out, e.g. in a law or policy.

Fulfilled
Achieved, implemented or satisfied, e.g. when your rights to things like equality and human dignity under our Constitution are fulfilled.

Good standing
Being allowed to practise professionally by the relevant law societies, e.g. instructing a *legal practitioner* who is in good standing.

Household
For legal aid qualification, a group of people who live together for at least 4 nights a week and who share meals and resources.

Impact Legal Services
Legal services, including *non-litigious* services that have the potential to positively and significantly affect the lives of many *indigent* people or particular groups of people.

Impact Services matter
A case or dispute that may qualify for legal aid under Legal Aid South Africa's *Impact Services Policy.*

Impact Services Litigation
Legal Aid South Africa's policy on *Impact Legal Services*.

Indigence
The ability of the person to qualify for legal aid.

Indigent/Indigent person
A person who qualifies for legal aid under Legal Aid South Africa's *means test* (not everyone who qualifies for legal aid will be assisted. Some matters are excluded).

Instituting action/institution of action
Starting a legal action.

Interdict
A court order instructing someone to do something or to stop doing something.

Interim
In the meantime – something that is temporary, e.g. an interim court order, an interim account.

Interlocutory application
An application to do something that is a step to the next necessary stage in the legal process, e.g. applying for *condonation* for a late application for *leave to appeal.*

Judicare
Delivery system for legal aid through procuring the services of *legal practitioners in private practice* to represent individual legal aid clients.

Judicare Accreditation System
Legal Aid South Africa's system for recognising *Judicare legal practitioners* and for the fair distribution of legal aid cases according to set *criteria.*

Justice Centre
Legal Aid South Africa centres or offices who administer and provide legal aid in many parts of South Africa.

Justiciable
When rights can be *enforced* in court.

Leave to appeal
Legal permission to appeal against a judgment or sentence in a case.

Legal aid applicant
Person applying for legal aid.

Legal Aid Manual
A document setting out details of policies and procedures for providing and administering legal aid, including circulars amending the Manual.

Legal aid recipient
Person receiving legal aid.

Legal capacity
By law able to act, e.g. sue someone.

Legal personality
A personality under the law, e.g. a company, a close corporation, an association, a trust.

Legal practitioner
An attorney or advocate.

Legal precedent
A case or court judgment that sets out the law that other cases must follow.

Liable
Legally responsible for something, e.g. owing money.

Liabilities
What you must pay others, e.g. your debts.

Litigant
Person who is one of the *parties* or sides in a court case.

Litigation
Taking a case to court.

Material loss
Financial loss – a loss that can be measured in money.

Matter
Case, dispute or issue that legal aid is considered or given for.

Matter reference
Legal Aid South Africa's reference number for a particular case.

Non-compliance
Not following or obeying a law, policy, procedure or contract.

Non-litigious
Matters or issues that do not go to court, but may be solved in other ways.

Obligations
Legal duties.

On commission
When evidence is heard outside of South Africa in a case that is continuing in a South African court.

Onus
Legal duty or responsibility

Oral argument
Verbal argument in court or another forum.

Paralegal
A person who may render legal services under the supervision of a practitioner. Specifically at Legal Aid South Africa, Paralegals include a Satellite Office Paralegal, Call Centre Paralegal, High Court Unit Paralegal, Justice Centre Paralegal, Remand Detainee Paralegal or a Paralegal performing any other function as required.

Party
Person or side involved in a legal case.

Party and party costs
Costs between the opposing *parties* or sides in a legal case, e.g. paying for the time spent by the other side's *legal practitioner* if costs are awarded against you in a case.

Penal jurisdiction
The court's power to sentence in cases involving crimes, e.g. drug-dealing, drunken driving.

Pending
Waiting for or until something happens, e.g. pending a court date or judgment.

Person receiving the legal aid application
Person permitted to receive applications, e.g. *agent legal aid officers, Paralegals, Candidate Attorneys and legal practitioners* in Magistrate's Court Offices and *Justice Centres*.

Petition
Special kind of legal application to a higher court where leave to appeal is not granted, e.g. a petition for *leave to appeal.*

Physically resident
Currently living in South Africa.

Plaintiff
Person making a claim in a civil case.

Plea
Saying whether you are guilty or not guilty in a criminal case, or what your defence is in a civil claim against you.

Prejudice
Unfair or negative effect.

Prescribed/Prescription
Legal time limit before a case falls away.

Prima facie
On the face of it, whether you have a strong enough case or evidence in a case.

Privilege/Privileged
Information that is private between a client and *legal practitioner,* or between a client and Legal Aid South Africa or person receiving the legal aid application.

Prospects of success
The chances of success in a case.

Pupil
A person serving pupillage with an advocate.

Quantitative jurisdiction
The court's power to decide claims up to a certain amount of money.

Quantum
The amount of a claim for money.

Regional Court
A Regional Magistrate's Court.

Remedy
Legal relief or help, e.g. receiving *damages* as compensation for injuries, getting a decision against you *reviewed* and changed.

Rescission
A special application to court to have a judgment set aside.

Respondent
The person answering an application in a civil case, or an appeal in a civil or criminal case.

Review
When a higher court considers a decision made by a lower court or another body to see if it is correct and followed set procedures.

Rule of law
When government and people are subject to and respect the law.

Salaried legal practitioner
Lawyers employed by Legal Aid South Africa.

Security
When you pay into court an amount to cover costs, e.g. costs of the opposing side in a court case.

Set off
Balance or cancel one amount against another, e.g. Legal Aid South Africa sets off fees and *disbursements* due to a *legal practitioner* against *damages* owing to Legal Aid South Africa by the practitioner.

Spouse
The partner of a married person under the law of South Africa, including customary and common law, as well as the civil union partner of a person in a civil union under the Civil Union Act 17 of 2006. Civil union partners are called 'spouses' when electing a 'marriage', or 'partners' when choosing a 'civil partnership'.

Stakeholders
A person or organisation who has an interest in the delivery of legal aid services to persons in terms of the Constitution.

Standard Operating Procedures
A set of procedures for people working for Legal Aid SA.

Statute/Statute law
Law passed by national or provincial Parliament, e.g. an Act, Regulations under an Act.

Statutory
To do with or in laws passed by national or provincial Parliaments.

Statutory body
Bodies with certain legal powers created by *statute.*

Statutory offences
Crimes under statutory laws, e.g. corruption, squatting.

Subsidised
Sponsored or supported financially.

Substantial injustice
When a person without legal aid would experience significant injustice by being sentenced, or having the possibility of being sentenced, to direct imprisonment of more than 3 months in a criminal case, or where his/her constitutional or personal rights are affected in a civil *matter.*

Superior court
A higher court, e.g. a High Court compared to a Magistrate's Court.

Systemic issues
These are cases and issues that are caused by deeply-rooted beliefs and practices within our society.

Third party
An outside or independent person – in other words, someone besides the people or bodies involved on either side of a dispute.

Unencumbered
Not burdened – free from legal restrictions or duties.

Vexatious/Vexatiousness
When a case is made without sufficient grounds with the aim of annoying or embarrassing the other side.

Vulnerable
People, who may be at risk of being abused, unfairly discriminated against or exploited, e.g. women, children, people living with HIV, refugees, farm workers.

Waive/Waiver
Choosing not to exercise or use provisions or rights, e.g. waiving the need for documentary proof; waiving the right to a claim.

Without prejudice
Reserving your rights – in other words, without giving up any of your legal rights, e.g. making an offer 'without prejudice' to settle a dispute.

Chapter 1: Legal Aid Manual

1.1 Purpose of the Manual

Legal Aid South Africa (Legal Aid SA) is a national public entity established by the Legal Aid SA Act 39 of 2014 (the Act), to render or make available legal aid and legal advice, to provide legal representation to persons at state expense and to provide education and information concerning legal rights and obligations as envisaged in the Constitution and in the Act. The broader mandate of providing education and information about legal rights will assist communities in being able to take advantage of their rights in the advancement of human rights and freedoms which are the founding values of our Constitution.

The Act requires the Board to compile, amend and approve a Legal Aid Manual for tabling by the Minister in Parliament and simultaneously give notice thereof by notice in the Gazette, which sets out the procedures in terms of which applications for legal aid are handled, the systems and methods whereby legal aid is delivered, the requirements and criteria for the accreditation of private legal practitioners, the terms and conditions on which instructions are allocated including the fees and disbursements payable to accredited legal practitioners and any other administrative matter which the Board deems necessary for the effective functioning of Legal Aid SA.

This Manual is designed to provide comprehensive information and guidance on the procedures regarding applications for legal aid and the relevant procedures regulating private legal practitioners. It also covers the systems and methods whereby legal aid is delivered to ensure proper implementation of legal aid.

The Manual has been compiled to ensure a comprehensive system that is accessible, effective, sustainable and credible in the administration of legal aid. This aspect is an important component of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which provide guidance to States on the fundamental principle for an effective and sustainable national legal aid system in order to strengthen access to legal aid.

1.2 The review and publication procedure

The Legal Aid Manual must be reviewed every second year and must be submitted to the Minister together with any amendments. The Minister must table it and any amendments thereof in Parliament and simultaneously give notice in the Gazette.

The Manual comes into operation 60 days after the publication of the notice in the Government Gazette.

1.3 Governance of Legal Aid South Africa

All Legal Aid SA offices will be governed by:

- The Legal Aid South Africa Act 39 of 2014 (the Act);
- The Regulations to the Act;
- The provisions of this Manual;
- The provisions of the Standard Operating Procedures of Legal Aid SA, as amended from time to time;
- The decisions of the Board of Legal Aid SA;
- Directives of the CEO of Legal Aid SA.

1.4 Copies of the Legal Aid Manual

Copies of this Manual and its amendments are available on Legal Aid SA's website and a copy is also available for inspection at all offices of Legal Aid SA.

Chapter 2: The Mixed Delivery System for legal aid

2.1 Legal Aid South Africa mixed delivery systems

In terms of section 4(1)(a)(iii) of the Act, the Board of Legal Aid SA may procure the services of legal practitioners in private practice by entering into contracts or agreements with them and other entities.

Legal Aid SA follows a mixed model service delivery system which consists of the Justice Centre Model, Judicare Model, Co-operation Agreement Model, Agency Agreement Model and Impact Litigation Services Model.

2.1.1 Justice Centre Model

Legal Aid SA mostly provides legal services by salaried legal practitioners employed at its Justice Centres and Satellite Offices.

In criminal matters one of the models for legal service delivery involves the stationing of salaried legal practitioners at most District and Regional Magistrate's Courts. The Practitioner per Court Model is most commonly used as it ensures the efficient and effective use of resources in covering the criminal courts.

The salaried legal practitioners employed by Legal Aid SA are obliged to adhere to all the legal and ethical obligations applicable to legal practitioners in private practice. Furthermore, in criminal matters, Legal Aid SA has its own Code of Professional Conduct for legal practitioners in its employ.

In the delivery of civil legal aid service, the Chief Legal Executive (CLE) may designate one or more Civil Clusters in each region. This area of a Civil Unit will consist of various Magisterial Districts. A Civil Cluster consists of a Civil Unit based at a Justice Centre and various Civil Sections at the other Justice Centres and Satellite Offices within the area of the Civil Cluster. Civil Units are based at 13 Justice Centres at permanent seats (or planned permanent seats) of the various divisions of the High Court.

2.1.2 Judicare

Judicare continues to supplement Legal Aid SA's capacity to provide legal services through its Justice Centres in a mix of delivery mechanisms, as decided by Legal Aid SA from time to time.

However, Judicare may also be used in these circumstances:

- In matters where there is a conflict of interest between *legal aid applicants* and separate legal representatives are required;
- In matters where specialist knowledge is required that is not available at the Justice Centre;

- In matters where the Justice Centre lacks the capacity to adequately represent the legal aid applicant.

2.1.3 Co-operation Agreements

In addition to direct service delivery through its Justice Centres and Satellite Offices, Legal Aid SA continues to make use of other means of facilitating access to justice through Co-operation Agreements with other institutions capable of delivering either legal services of a particular specialist nature or within a particular geographical area.

These organisations provide legal services that contribute to achieving Legal Aid SA's vision and mission. The funding provided by Legal Aid SA is used to directly benefit the indigent through a targeted delivery of legal services.

2.1.4 Agency Agreements

Legal Aid SA also enters into Agency Agreements with law firms to deliver access to justice to clients, especially in areas where it is too remote for Legal Aid SA or if it is not feasible to establish an office in that area.

In criminal matters, the Agency Partner is appointed to provide legal aid assistance to qualified legal aid applicants appearing in the Magistrate and Regional Court of the area covered by the law firm. In terms of the Agency Agreement, Legal Aid SA pays a fixed monthly fee calculated by multiplying the agreed minimum number of cases with the agreed costs per case for the type of court to be served by the law firm.

2.1.5 Impact Litigation Services

Impact Litigation Services are rendered to assist in making the Constitution a living reality for the marginalised segments of our population. It provides the opportunity for Legal Aid SA to undertake and fund litigation or other legal work that can truly live up to the services name and have a profound 'impact' on a group or significant segment of a group. The impact of the work undertaken and funded as Impact Litigation Services has the potential to have a far greater reach than to one individual client.

These Impact Litigation Services could be rendered by:

- Salaried legal practitioners employed at Legal Aid SA's offices, or
- Legal practitioners in private practice, or
- A Co-operation Partner of Legal Aid SA, or
- Legal NGOs, or
- A Law Clinic, or
- Any combination of the above.

Impact Litigation Services thus could be, but are not restricted to, matters in which the legal assistance to be rendered relates to litigation likely to establish a legal precedent.

Impact Litigation matters will be distinguishable from routine legal aid matters by the level of resources devoted to individual matters precisely because of the far-reaching potential impact of these.

Preference is given to proposals responding to Legal Aid SA's strategic priorities, but other proposals that address the socio-economic rights of indigent and vulnerable persons and/or communities will also be considered.

Chapter 3: Applying for legal aid

3.1 Applying, processing and administration of applications

3.1.1 Legal aid applications

(a) Applying for legal aid

A legal aid applicant may apply for legal aid at any office of Legal Aid SA or through any Legal Aid SA employee or agent legal aid officer. Applicants in criminal matters may apply at any court for legal aid. Applications for legal aid may be made for advice or legal representation.

A legal aid applicant fills in a **Legal Aid Application form** in order to apply for legal aid.

The **Legal Aid Application form** incorporates a simplified means test. Note that if the applicant is unemployed, it is not necessary to complete a detailed means test form.

If the applicant is employed, such applicant must complete a detailed means test form to determine whether s/he qualifies for legal aid.

If the applicant exceeds the means test, but it is a criminal case that falls within the Jurisdiction of either the Regional Court or High Court, such applicant must complete the **Means Test in Constitutional Matters form**.

If legal aid is refused in a criminal case, the person receiving the legal aid application must get the legal aid applicant to complete the **Refusal of Legal Aid form** in duplicate. S/he must then:

- Forward one copy of the **Refusal of Legal Aid form** to the Justice Centre Executive (JCE), and
- Give the second copy to the legal aid applicant.

A legal aid applicant aggrieved by the refusal of legal, may appeal against such decision in accordance with the procedures detailed in this manual.

The person assisting or taking the legal aid applications must ensure that forms are properly completed. The JCE or a person delegated by the JCE, when receiving the documents of a legal aid applicant, must satisfy her/himself that the documents are properly completed.

(b) Formal application for legal aid

Any employee of Legal Aid SA at any of its offices may receive legal aid applications when the need arises.

Where the application is received by an attorney, advocate or Candidate Attorney employed at Legal Aid SA, they may immediately render legal services to the applicant where it *prima facie* appears that the applicant qualifies for legal aid.

(c) Personal application

An applicant for legal aid must apply for legal aid in person or by personally submitting a completed application.

Where a legal aid applicant requires advice only, a Paralegal records such a request on the Legal Aid SA electronic administration system, and provides the necessary advice or assistance to the applicant.

(d) Legal aid application by a child

An application for legal aid by a child is similar to other legal aid applications, except that:

(a) A child or any adult acting on behalf of the child may apply for legal aid.
(b) If there is a court order requiring legal aid to be provided, then the **Legal Aid Application form** does not have to be signed.
(c) If there is no court order, then the person acting on behalf of the child may sign the **Legal Aid Application form** on behalf of the child.

If the child is not assisted by an adult, then the JCE should assist in obtaining the necessary information to complete the **Legal Aid Application form** on behalf of the child. The JCE must then sign the application, certifying that s/he completed the **Legal Aid Application form** on behalf of the child.

3.2 Obligation of presiding officers in respect of legal aid applications

A JCE of the area concerned, in respect of each Magisterial District within which a seat of a Division of the High Court is located, shall liaise with the Chief Magistrate of the district and any other Magistrate, to advise on the procedures to apply for legal aid and how to deal with an accused without legal aid who wants to apply.

(a) An accused who is informed that the Director of Public Prosecutions has decided that the accused is to be indicted before the High Court should simultaneously be advised that the legal aid already granted to the accused in respect of the proceedings before the Magistrate's Court will continue – upon transfer of the matter to the High Court.
(b) If the accused indicates to the Magistrate that s/he is not on legal aid and has the need of legal representation in terms of section 35(3)(g) of the Constitution, 1996, in respect of proceedings before the High Court, the Magistrate should refer the accused to the local Justice Centre representative to complete an application for legal aid.

(c) If the accused is not in detention, the Magistrate should indicate to the accused where the Justice Centre representatives are located and if there is no local Justice Centre representative, where the agent legal aid officer employed by the Department of Justice and Constitutional Development can be found.

(d) If the accused is in detention, the Magistrate should either arrange for the accused to be escorted to the local legal aid representative or for the local legal aid representative to attend upon the accused at the cells of the Magistrate's Court.

3.3 Processing the legal aid application

(a) Capturing electronically

A Legal Aid SA office that receives an application for legal aid that relates to a *matter* that originates from a Magisterial District that is not part of its coverage area, must:

- Process the application electronically on Legal Aid SA's electronic Legal Aid Administration system.
- Refer the matter to the applicable Justice Centre electronically.

(b) Registering the matter

Once the legal aid application is completed and forwarded to the relevant Justice Centre, the agent legal aid officer's task is completed, except for registering the matter and responding to queries or requests of the Justice Centre.

The register of applications received by the agent legal aid officer must include:

- The name of the applicant.
- The date of the application.
- The case number.
- The method of transmission to the Justice Centre.
- The date of transmission to the Justice Centre.
- Acknowledgment of receipt by a Justice Centre employee (if applicable).
- The result of the application.

If the application was delivered to an employee of a Justice Centre, then the employee must acknowledge receipt of the application by signing the register for the applications received from the agent legal aid officer.

(c) Verifying details

The person receiving the legal aid application must verify the correctness and completeness of all the particulars of the *applicant.* Wherever appropriate, documentary proof must be given on the applicant's income, expenses, *assets* and *liabilities.*

(d) Proof of income

Proof of income, or state grant or old age pension, must be submitted with the legal aid application, with whatever supporting documents are available.

Examples of proof of income include:

- An offical salary voucher;
- A letter of confirmation from employer;
- A certified statement of income and expenditure;
- Any relevant tax assessment or bank statement;
- Certificates of investments;
- Documentary evidence on all issues reflected in the forms.

(e) General processing guidelines

- Where application for legal aid is for advice only, no forms must be completed. Only limited details of the applicant are captured on the electronic system.
- No manual instructions may be issued to any legal practitioner, unless this is in accordance with the agreed Business Continuity Plan of Legal Aid SA.
- **Legal Aid Application forms** must be completed for every application even if legal aid is refused, only advice is given, or the applicant is referred to another organisation for assistance.
- **Legal Aid Application forms** must be completed for each applicant.
- Where more than one person applies for legal aid in any one matter, the applications for co-applicants must be indexed according to Legal Aid SA software system procedures.
- No legal aid instruction will be issued unless the application has been processed and evaluated following the legal aid application procedure.

3.4 Procedure to grant legal aid

JCEs must follow this 3-step procedure in deciding whether or not to grant legal aid:

First

- Is the applicant's matter one under the Constitution or under the Legal Aid SA Regulations?

Second

- Does the applicant qualify in terms of the means test?

Third

- If the applicant is not indigent but would suffer substantial injustice under the Constitution if not given legal aid, then is s/he unable to afford the cost of her/his own legal representation?

(a) Consequence of court order
If a court order has been issued for legal aid to be granted in a matter, the JCE has no further discretion in the case and must issue a legal aid instruction, unless reviewed as per (b) below.

(b) Review or appeal on court order
Legal Aid SA may *review* or appeal against the decision of the judicial officer who issued the court order.

A JCE who receives a court order granting legal representation either by Legal Aid SA or at State expense, must within one business day:

- Forward the court order to the Litigation Section at the National Office of Legal Aid SA, and
- Follow up telephonically on whether the court order was received.

(c) Report by JCE
Where Legal Aid SA must file a report under section 22 of the Act, the JCE of the nearest Justice Centre must complete the report.

3.5 Appeal against refusal of legal aid
The Regulations provide circumstances under which legal aid may be refused.

3.5.1 Appeal to Regional Operations Executive
An applicant has the right of appeal to the ROE against the refusal of a JCE to grant legal aid. The JCE shall inform the applicant of this right and, if requested within three months of being informed of the right, the JCE shall give detailed reasons for the refusal of the legal aid.

The grounds of appeal must be submitted to the JCE in writing. The JCE must forward these to the ROE together with the application documents and her/his comments.

3.5.2 Appeal to National Operations Executive or Chief Legal Executive
An applicant has the right of appeal to the NOE, in criminal matters, or to the CLE, in civil matters, against the refusal of the ROE to grant legal aid. The ROE shall inform the applicant of this right and, if requested within three months of being informed of the right, the ROE shall give detailed reasons for the refusal of the legal aid.

The grounds of appeal must be submitted to the ROE in writing. The ROE must forward these to the NOE or CLE together with the application documents and her/his comments.

3.5.3 Limitation of appeals against refusal of legal aid

If the NOE or CLE also refuses legal aid, the legal aid applicant's internal remedies are exhausted. There are no further internal appeals beyond the NOE or CLE.

A dissatisfied legal aid applicant may:

- Apply for judicial relief – for example, a *review* of the NOE or CLE's decision.
- Approach the presiding judicial officer in serious criminal cases to issue an order requiring a report under section 22 of the Act.

3.5.4 NOE or CLE's reasons

The NOE or CLE will give reasons for the decision to the applicant or her/his legal representative, if requested, in writing within three months after the decision was communicated to the legal aid applicant or her/his legal representative.

3.6 Safekeeping and handling of documents

(a) JCEs handling of documents

JCEs must deal with the original application forms, supporting documents and instruction forms as follows:

- Whether or not an application has been granted, the original **Legal Aid Application form** must be filed in the matter file of the Justice Centre.
- The original and duplicate copy of the **Legal Aid Instruction form** must be forwarded to the *legal practitioner* instructed after the evaluation and allocation of the matter has been completed.

Guidelines on the **Legal Aid Instruction form**:

- The **Legal Aid Instruction form** is the copy for the practitioner.
- The **Legal Aid Instruction form** has the *certificate probabilis causa* on the back – this must be signed by the practitioner and returned to the Justice Centre to indicate that the practitioner accepts the instruction.

(b) Full and clear completion of legal aid forms

Legal Aid Application forms must be completed in full and in a clearly legible manner.

They should briefly but clearly state:

- Particulars of the action, charge or legal issues.
- The extent of the assistance required.
- The name of the particular court.

For example, it is not enough to simply state that legal aid has been granted for “civil action”, “claim for damages”, “criminal case” or “continuation of action or proceedings” – detail is required.

(c) Assisting applicants

Persons receiving legal aid applications must, where necessary, assist the applicant with:

- Completing application forms and means tests, where applicable.
- Preparing any appeals against the refusal of legal aid.

(d) Full personal particulars

The particulars of the person requiring legal aid must be filled in on the **Legal Aid Application form**. Great care should be exercised in getting the correct first names and surname of the applicant.

Example:

If the person is a dependant minor, the person receiving the legal aid application must also obtain and record the details of the parents or guardian. This must also be indicated on the **Legal Aid Instruction form**.

Example:

If a minor is self-supporting, this must be recorded on the instruction.

(e) Reference number

The reference number of each matter must be entered on all the prescribed documents relating to the case. Legal practitioners must refer to the *mailer reference* in communicating with Legal Aid SA.

(f) Termination of matter

Should a JCE become aware, after an instruction has been issued, that the legal practitioner or the applicant is not proceeding with the matter, the JCE must:

- Terminate the instruction in writing, and
- Index the letter terminating the instruction to the matter file, and
- Close the matter.

3.7 Co-ordinating and evaluating applications: Criminal cases

(a) Report to court

Section 22 of the Act provides that:

A court in criminal proceedings may only direct that a person be provided with legal representation at state expense, if the court has evaluated the circumstances of the

person and has referred the matter to Legal Aid SA for evaluation and a report on whether or not a person qualifies for legal representation.

When compiling a *report* under section 22 of the Act, the JCE must submit the report in triplicate in the prescribed form and then:

- Forward the original to the Clerk or Registrar of the court.
- Forward one copy to the Litigation Section of Legal Aid SA.
- Retain the remaining copy, together with a copy of the court order requiring the report and the **Legal Aid Application form**.

(b) Procedure for payment of contributions

In terms of the regulations to the Act, legal aid may be provided to the applicant subject to a contribution. Contributions are determined in terms of the contributions tables as per Annexure A to this Manual. The following procedure is followed regarding payment of contributions:

(a) An accused who is obliged to make a contribution must be advised in writing in accordance with **Contribution Payable by Accused form**. The signature of the accused must be obtained on the **Contribution Payable by Accused form** before any legal aid instruction is authorised. A copy of the signed **Contribution Payable by Accused form** must be annexed to the legal aid instruction forwarded to the legal practitioner assigned to the accused. A further copy of the signed **Contribution Payable by Accused form** must be handed to the accused. The signed original **Contribution Payable by Accused form** must be retained by the JCE.

(b) At the first appearance after the authorisation of legal aid, the assigned legal practitioner must place it on record that legal aid has been authorised subject to the payment of monthly contributions by the accused.

(c) Where legal aid is granted pursuant to a court order in terms of section 22 of the Act and where a contribution is appropriate, the JCE or her/his representative must request the presiding judicial officer to make the payment of monthly contributions by the accused part of the court order. A judicial officer has no legal authority in terms of section 22 to let herself/himself determine whether a contribution should be made and if so in what amount.

(d) Contributions are payable monthly in advance by not later than four days after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fourth of each succeeding month for each month or portion of a month during which legal aid continues to be extended to an accused.

(e) Contributions must be deposited directly to the Trust Account of Legal Aid SA by the accused or her/his agent.

(f) No contribution may be received by any legal practitioner nor the employee nor agent of any legal practitioner acting on a legal aid instruction. No employee of Legal Aid SA may receive any contribution.

(g) The accused must deliver proof of payment of all contributions due to her/his assigned legal practitioner by no later than the fifth day after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fifth day of each succeeding month for each month or portion of a month during which legal aid continues to be extended to an accused.

(h) If an accused fails to pay any contribution due, legal aid terminates and the assigned legal practitioner must advise the accused and the relevant judicial officer of the termination of legal aid either in writing or in court at the next appearance.

(c) Accused not initially applying for leave to appeal

If an accused chooses not to apply for leave to appeal, but subsequently applies for legal aid for leave to appeal, this should be considered as a new application.

If the application for legal aid is successful, an instruction for prosecuting an application for leave to appeal should be issued to the practitioner who represented the accused at the trial.

If the application for leave to appeal is successful, and after the Notice of Appeal and Special Power of Attorney have been served and filed, a new legal aid instruction must be issued by the JCE or High Court Unit Manager (HCUM) to a practitioner practising at the seat of the relevant appeal court.

(d) Accused applying for leave to appeal

If an accused has had legal aid for a trial and applies for *leave to appeal*, it will not be necessary to again apply for legal aid for the appeal, provided an application for leave to appeal is timeously made to the court hearing the trial and is granted.

(e) Refusal of leave to appeal: Petition within time

If the trial court refuses an application for leave to appeal, and the accused chooses to apply for or *petition* a *superior court* for leave to appeal within the permitted time period, then the practitioner must serve and file petition for leave to appeal.

(f) Refusal of leave to appeal: Petition outside time

If the trial court refuses an application for leave to appeal, and the accused subsequently chooses to petition or apply to a superior court for leave to appeal outside the permitted time period, this should be considered as a new application.

If the application for legal aid is successful, the JCE or HCUM should issue an instruction for prosecuting an application for leave to appeal to the original practitioner or the next practitioner allocated by Legal Aid SA.

If the petition or application for leave to appeal is successful, a new legal aid instruction must be issued to a practitioner practising at the seat of the relevant appeal court (after the Notice of Appeal and Special Power of Attorney have been served and filed).

3.8 Co-ordinating and evaluating applications: Civil cases

Preliminary issues

(a) Acknowledgement and undertaking by the applicant

The applicant must sign the prescribed **Acknowledgment and Undertaking form** before legal aid is granted.

(b) Approving legal aid for a merit report

When an applicant applies for legal aid, the JCE may authorise the provision of legal aid for a merit report where required. A merit report is prepared by a practitioner incorporating the following issues:

(a) Whether the legal aid applicant is plaintiff/applicant or defendant/respondent.
(b) The court where the case is to be heard.
(c) The nature and amount of the claim.
(d) The factual background of the case.
(e) Full details of the merits of the case and a detailed explanation of the success that is expected.
(f) The availability of evidence and witnesses.
(g) The need for experts and other witnesses, and the expected costs of their evidence and testimony.
(h) The expected date for hearing and the anticipated duration of the trial.
(i) The financial ability of the other side to satisfy the claim and costs if the legal aid applicant is successful.
(j) The expected defences to be raised.
(k) The stage the matter has reached by the date of application, and all cost implications of the proceedings to that date.
(l) The nature and effect of any previous court orders in the case.
(m) The possibility of settling all or part of the dispute.
(n) The total expected financial involvement of Legal Aid SA.

The recommendation of a merit report provides a determination whether legal aid should be provided to the applicant. While an attorney is preparing a merit report, such attorney must take the necessary steps to prevent prescription, default judgment or lapsing of the litigant's rights.

The merit report must be attached to the signed **Legal Aid Instruction form**, if legal aid is granted, and sent to the JCE.

(c) Liability for costs

The applicant must also be advised that s/he would be liable for any costs of the opposing party if this is awarded against her/him.

3.9 Processing applications: Categories of applicants

3.9.1 Criminal cases

(a) Co-accused

Where more than one accused is represented by a single legal practitioner, the names and details of all the co-accused represented by the legal practitioner instructed must be recorded in the **Legal Aid Instruction form** for the first legal aid recipient.

Separate legal aid instructions must never be issued for co-accused represented by the same legal practitioner

Where more than one legal aid applicant applies for legal aid for the same case, the *person receiving the legal aid application* will ask the legal aid applicants if there is any *conflict of interest* between them.

If no conflict of interest is disclosed to the person receiving the legal aid application s/he must instruct a single legal practitioner to represent all legal aid applicants in that case; provided that this does not exceed between 5-8 accused for each practitioner.

(b) Single practitioner instructed for more than one applicant

Where a single legal practitioner is instructed to represent more than one legal aid applicant, this must be done by setting out the details of the first legal aid applicant on the **Legal Aid Instruction form**, and detailing the particulars of the remaining legal aid applicants in the **Legal Aid Instruction form**.

A legal practitioner who receives a single legal aid instruction for more than one legal aid applicant must ensure, from the start of the case, that no conflict of interest exists between her/his clients.

(c) Determination of conflict of interest

The JCE or HCUM may, in a case where there may be a potential conflict of interest, appoint a legal practitioner to consult with all legal aid applicants involved in the particular case to determine whether or not there is any conflict of interest between them. The legal practitioner assigned to investigate may not appear unless no conflict

of interest has been determined on behalf of any of the legal aid applicants when the case goes to court.

If a single practitioner discovers a conflict of interest, the legal aid instruction must be returned to the JCE with an appropriate letter so that separate legal aid instructions may be issued to other legal practitioners.

When a conflict of interest is disclosed, the JCE must instruct separate legal practitioners for each legal aid applicant or group of legal aid applicants. If the separate practitioners are both or all employed by Legal Aid SA, then:

- Each practitioner must report to a separate supervisor.
- Precautions must be put in place to ensure the *confidentiality* of *privileged* attorney/client communications.

3.9.2 Civil cases

(a) Labour cases

If an applicant requires legal aid for a Labour Court case, the legal aid applicant should apply at the nearest Justice Centre. A specialist legal practitioner for labour has been appointed at each of the Cape Town, Durban, Port Elizabeth and Johannesburg Justice Centres.

Labour cases should be referred to these Justice Centres. Where the JCE of the Justice Centre has confirmed that they do not have the capacity to attend to the matter they may allocate to Judicare.

(b) Matrimonial matters

An applicant receiving legal aid for divorce proceedings, must herself/himself and at her/his own expense get a copy of the marriage certificate if they have lost or misplaced the original marriage certificate.

(c) Asylum seekers

In terms of the Regulations, legal aid may be granted to a legal aid applicant who seeks asylum in the Republic who intends to apply for asylum under chapter 3 or 4 of the Refugees Act, 1998.

When such application is made, the legal practitioner's report to the JCE must include:

- A copy of the *Asylum* application.
- A brief opinion by the legal practitioner on the merits of the application.
- The Refugee Reception Officer's reference number for the application.

Normal procedures related to merits apply.

(d) Undertaking by applicant

When legal aid is granted in any civil matter dealing with a claim sounding in money, the JCE must ensure that the legal aid applicant undertakes in writing on the **Acknowledgment and Undertaking form** to authorise Legal Aid SA and the legal practitioner to ensure that moneys owing to Legal Aid SA are collected. Any monetary benefit obtained as part of the division of assets forming part of the former matrimonial estate on divorce is excluded from any benefit due to Legal Aid SA.

The legal aid applicant further undertakes:

- Not to personally seek payment of any amount claimed in *litigation.*
- To immediately pay over any amount received because of litigation to the legal practitioner instructed or, if the practitioner withdraws, to Legal Aid SA.

The JCE must ensure that the provisions of the said written undertaking are signed and understood by the legal aid applicant. A copy of the signed Acknowledgment and Undertaking Form must accompany the legal aid instruction sent to the legal practitioner.

(e) The legal practitioner's responsibilities

The **Acknowledgement and Undertaking form** instructs the legal practitioner to:

- Give notice to any other party to litigation that any payment is to be made only to the legal practitioner instructed, or if s/he withdraws, to Legal Aid SA, and *not* to the legal aid applicant.
- Receive any amount due to the legal aid applicant as a result of any court order or settlement, and retain all amounts for costs and 50% of any other amounts until the legal aid applicant's debt to Legal Aid SA has been determined and discharged.
- Pay to Legal Aid SA all amounts due to Legal Aid SA, including the *benefit* to Legal Aid SA calculated in accordance with the provisions of this Manual.

For example, a Judicare practitioner who on behalf of a successful legal aid litigant recovered R150 000 general damages and R50 000 party-and-party costs, but whose attorney-client costs were taxed at R75 000 by Legal Aid SA would:

- Bank both the R150 000 and the R50 000 in her/his trust account;
- Pay R75 000 (50% of the capital) to the client;
- Pay R50 000 (party-and-party costs) to Legal Aid SA;
- Pay R9 000 (the Benefit due to Legal Aid SA on the capital) to Legal Aid SA;
- Pay R25 000 (the difference between attorney-client costs and party-and-party costs) to Legal Aid SA;
- Receive R75 000 (the attorney-client costs) from Legal Aid SA for deposit in the practitioner's Business Account;

- Pay R41 000 (the balance of the capital) to the client, once accounts were finalised.

The process might be shortened by set-off but the result would still be that the client receives a total of R116 000 (in two instalments); the practitioner receives R75 000 and Legal Aid SA receives R9 000 more than it disbursed. Although this example refers to a Judicare practitioner, the same principles apply when legal aid is provided by a salaried legal practitioner at a Justice Centre.

Chapter 4: Judicare

4.1 Judicare Accreditation System

The objective of Legal Aid SA's Judicare Accreditation System is to have a database of competent qualifying private legal practitioners with a view to expanding the delivery of legal services to Legal Aid SA's clients.

4.2 Application for accreditation

4.2.1 Accreditation of legal professional bodies

Professional bodies governing the attorney's profession in terms of the Attorneys Act do not have to apply for accreditation.

Voluntary professional bodies currently governing the advocate's profession must apply for accreditation with Legal Aid SA.

An application by an advocate's association may be made by its chairperson for accreditation on the prescribed form. Legal Aid SA will only accredit advocate's associations provided the association meets the following requirements:

- The association must have an identifiable office and a committee functioning;
- The association must require their members to have completed pupillage set by their association;
- The association must be able to issue a certificate of good standing for its members;
- The association must have a set constitution including a disciplinary code and procedure;
- The association must be able to exercise effective disciplinary control over its members;
- The association must have clear guidelines and obligations on pupils;
- A code of conduct regulating its members' conduct must be in place;
- Members of the association must at least contribute to the teaching of law and the administration of justice; and
- The association must be able to have the capacity to interdict, suspend or strike off a member from the roll of advocates, in appropriate cases.

The application for accreditation shall be made by completing and submitting a standard application form together with accompanying documentation. The application form will require the applicant's association to furnish the following information:

- Full details of the association;
- Physical address of the administrative office;
- Telephone number and fax number of the administrative officer;
- Email address of the administrative office.

4.2.2 Accreditation of legal practitioners

A legal practitioner shall apply for accreditation and inclusion of her/his name on the directory of accredited practitioners on the prescribed forms.

Applications for accreditation and inclusion on the Directory of Accredited Legal Practitioners shall be made by completing and submitting a standard **Accreditation form**.

The application form will require the applicant to furnish the following information:

- Proof of identity;
- Proof of admission as an attorney/advocate;
- Written proof that an attorney is entitled to appear before the High Court in instances where accreditation is sought for High Court work;
- In the case of advocates who are members of professional bodies, a certificate of membership of that body and confirmation that there are no proceedings to suspend, interdict or strike the member off from the roll; or
- In the case of attorneys, a certificate of good standing from a Law Society and confirmation that there are no proceedings to interdict or strike the member off from the roll.

JCEs, in respect of magisterial districts and High Court jurisdictions in the service areas of their Justice Centres, shall separately consider applications for accreditation for all magisterial districts and High Court jurisdictions included in each application.

A JCE, having satisfied herself/himself that a practitioner may be accredited, forwards the Accreditation Agreement for Private Legal Practitioners (Accreditation Agreement) to the NOE/CLE or anyone so delegated by the NOE/CLE in writing, for consideration for approval/refusal.

The NOE/CLE or their delegate/s returns a completed copy of the Accreditation Agreement to the JCE.

Accreditation of a practitioner shall only take effect from the date on which an Accreditation Agreement is reduced to writing and signed in Johannesburg by the NOE/CLE or their delegate/s on behalf of Legal Aid SA.

JCEs shall ensure that Judicare practitioners are made aware of the following issues:

- General overview of Legal Aid SA.
- Legal Aid SA’s strategic objectives.
- Legal Aid SA’s philosophy about service to the poor and vulnerable.
- The Accreditation Agreement and the terms and conditions for accreditation with private practitioners.
- Service excellence and quality control.

- Judicare procedures and requirements as detailed in the Legal Aid Manual and circulars issued by Legal Aid SA between updates of the Legal Aid Manual.
- Submission of accounts and supporting documents.
- Accounts enquiry procedures.
- Dispute resolution procedures.
- Suspension and withdrawal of a practitioner's accreditaion status.

The NOE/CLE or their delegate/s returns a completed copy of the Accreditation Agreement to the JCE, who in turn supplies a copy thereof to the practitioner. Accreditation of a practitioner shall only take effect from the date on which an Accreditation Agreement is reduced to writing and signed.

4.3 Qualification for accreditation, suspension and withdrawal of accreditation

4.3.1 Qualification for accreditation

The accreditation of legal practitioners to perform Judicare work is at the discretion of Legal Aid South Africa.

To qualify for accreditation, the Judicare practitioner must comply with the following requirements:

- Must be a practising attorney or advocate;
- Must belong to a professional governing body;
- Must be in good standing with her/his professional body;
- Must be registered on the National Treasury Central Supplier Database;
- Must be in good standing with the South African Revenue Services.

Accreditation may be refused on the following grounds:

- None compliance with one or more requirements for accreditation;
- Misconduct by the practitioner in the handling of legal aid instructions;
- The existence of a damaged relationship between the practitioner and Legal Aid SA.

4.3.2 Suspension of accreditation

A practitioner shall be placed on suspension if the practitioner:

(a) requests in writing that no legal aid instruction should be allocated to her/him for a specified period.
(b) does not update her/his records with Legal Aid SA.
(c) does not follow the procedure for accounting set out by Legal Aid SA.
(d) conducts herself/himself in a way that results in a damaged relationship between her/him and Legal Aid SA.
(e) is placed on the list of restricted suppliers on the Central Supplier Database.

(f) is under investigation for any reason including, but not limited to fraud, unethical behaviour or failure to comply with the Manual and Accreditation Agreement.
(g) pending an inquiry into the withdrawal of the practitioner's accreditation.

4.3.3 Withdrawal of accreditation

The practitioner's accreditation may be withdrawn on the following grounds:

- If the practitioner requests in writing that no further legal aid instructions should be issued to her/him;
- A practitioner consistently does not comply with the policies, procedures and rules of Legal Aid SA;
- If the practitioner commits misconduct, fraud or dishonesty;
- If the practitioner consistently fails to meet Legal Aid SA's quality requirements;
- If the relationship between Legal Aid SA and the practitioner is damaged;
- The practitioner is struck off the roll or suspended from the roll.

4.3.4 Procedure to be followed before a practitioner is suspended or accreditation is withdrawn

The following steps must be followed before a Judicare Practitioner is suspended or before their accreditation is withdrawn:

- A letter setting out the full facts of why it is sought to suspend or remove the practitioner from accreditation must be sent to the practitioner calling upon the practitioner to respond to the allegations within two weeks.
- Legal Aid SA may at its discretion or at the request of the practitioner set up an informal enquiry to deal with the allegations.
- After receiving all submissions, Legal Aid SA will consider the matter and communicate its decision to the practitioner in writing.
- If the Judicare practitioner is not satisfied with the outcome, the practitioner may appeal the decision to the CEO within two weeks after the decision was made.

4.4 Judicare instructions

4.4.1 Allocation of instructions to Judicare practitioners

Legal aid instructions are allocated to legal practitioners in accordance with Legal Aid SA's Judicare Accreditation System for accredited legal practitioners.

Instructions are allocated automatically by the electronic Legal Aid Administration system which takes the following factors into account in selecting practitioners who should be offered instructions:

- The Broad-Based Black Economic Empowerment (B-BBEE) status of the firm;
- The number of past instructions allocated to the firm;
- The value of past instructions allocated to the firm;
- The practitioner's area of specialisation, where specialisation is the reason for allocating Judicare.

4.4.2 Judicare allocations procedure incorporating Broad-Based Black Economic Empowerment

Legal Aid SA provides for a measure of preference in the allocation of Judicare instructions so as to encourage B-BBEE.

In terms of Treasury Circular 5 of 2016/2017, accredited Judicare vendors must submit a sworn affidavit or B-BBEE Certificate in order to claim BEE points. This will include confirmation of whether they are categorised as *Exempted Micro Enterprises* (EME) or *Qualifying Small Enterprises* (QSE).

The Codes of Good Practice, 2013 under section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003, as amended by Act 46 of 2013), defines an *Exempted Micro Enterprise* as any enterprise with annual total revenue of R10 million or less. In terms of this category:

- An EME automatically qualifies as a Level 4 contributor in terms of the Code of Good Practice;
- An EME with at least 51% black ownership qualifies as a Level 2 contributor;
- An EME with 100% black ownership qualifies as a Level 1 contributor.

An EME is required to submit a sworn affidavit confirming their annual total revenue of R10 million or less and level of black ownership or a B-BBEE level verification certificate to claim points as prescribed by regulations 5 and 6 of the Preferential Procurement Regulations, 2011.

The Codes of Good Practice, 2013 (The Codes) under section 9(1) of the Broad-Based Black Empowerment Act, 2003 (Act No. 53 of 2003, as amended by Act 46 of 2013), defines a *Qualifying Small Enterprise* as an enterprise with an annual total revenue of between R10 million and R50 million. In terms of this category:

- A QSE with at least 51% black ownership qualifies as a Level 2 contributor;
- A QSE with 100% black ownership qualifies as a Level 1 contributor.

A QSE is required to submit a sworn affidavit confirming their annual total revenue of between R10 million and R50 million and level of black ownership or a B-BBEE level verification certificate to claim points as prescribed by regulations 5 and 6 of the Preferential Procurement Regulations, 2011.

In terms of the Preferential Procurement Regulations, points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the following table:

B-BBEE Level of Contributor	Number of points (80/20 system)
1	20
2	18
4	12
Non-compliant contributor	0

In applying the awarding of points for B-BBEE level of contribution in terms of the regulations to the PPPFA the following points will apply to both EMEs and QSEs:

(a) EME level 4 : 12 points
(b) EME level 2 : 18 points
(c) EME level 1 : 20 points
(d) QSE level 2 : 18 points
(e) QSE level 1 : 20 points

In terms of the normal application of the PPPFA, all procurements below R500 000 must be evaluated on the 80/20 points scoring system, where 80 points is for price and 20 points is for B-BBEE. However, noting that Legal Aid SA's Judicare system is based on a set tariff which is non-competitive, the normal procurement process as outlined above cannot be applied in terms of price.

Therefore, in order to ensure that recognition is taken of the B-BBEE component, all Judicare vendors will be ranked based on their earnings which will thereafter be adjusted to take into account their B-BBEE level. Judicare earnings will constitute both payments received over a rolling 12 month period, as well as all commitments for current pending matters. This total amount is then adjusted by the following multipliers in accordance with the vendor's B-BBEE level:

B-BBEE Level of contribution	BEE score in terms of the PPPFA	Multiplier
Level 1	20	1.00
Level 2	18	1.02
Level 4	12	1.08
None	0	1.20

The vendor's adjusted earnings are then used to determine their rank. The ranking is calculated by determining each vendor's average earnings per month (after it has been adjusted for B-BBEE). Vendors with the lowest average earnings per month will be ranked higher than vendors with higher average earnings per month. The Judicare

vendor with the lowest average earnings per month will be ranked the highest, i.e. rank of 1.

The average earnings per month for Judicare vendors who have multiple accredited practitioners must be calculated by first taking their total earnings over a rolling 12 month period and adjusting this amount with their B-BBEE multiplier. This calculated amount must thereafter be divided by the number of accredited practitioners of the vendor and thereafter divided by 12 in order to determine the vendor's average earnings per month. Noting that all the accredited practitioners of the vendor will have exactly the same ranking, our system will be developed to thereafter take into account the number of Judicare instructions received by each accredited practitioner of the vendor, with the practitioner receiving the least number of instructions being the one that is selected by our system to receive the Judicare instruction.

The Legal Aid electronic Legal Aid Administration system ensures that for any matter which has to be allocated to Judicare, the top 4 ranked practitioners for the court seat, who are accredited for the matter type and court, will be offered the Judicare instruction and the contract will be concluded with the vendor of the practitioner who has the highest rank amongst the practitioners who are accepted.

4.4.3 Rules applicable to Judicare instructions

(a) Providing legal aid within scope of instructions

A legal practitioner must have the written consent of the JCE to render assistance, including applications, beyond the scope of the main instruction.

(b) Notice that legal aid is rendered

The legal practitioner must on behalf of Legal Aid SA, inform the opposing party and the registrar of the court in writing that legal aid is being rendered to the litigant by Legal Aid SA under section 20 of the Act and forward a copy of notice to the JCE.

(c) Instructing a correspondent attorney or briefing an advocate

A legal practitioner must have the written consent of the JCE to instruct a correspondent attorney or to brief an advocate.

(d) Appointing of experts

Where an expert may be required in a matter, a legal practitioner must have written consent from Legal Aid SA.

(e) Progress report

A legal practitioner must provide Legal Aid SA with progress on the matter in criminal matters after every court appearance, and every three months in civil matters.

4.5 Tariffs payable to Judicare practitioners

This section sets out guidelines for paying legal practitioners carrying out Judicare instructions. The tariffs payable to legal practitioners shall be reviewed and amended from time to time.

4.5.1 Criminal trials and appeals

Annexure B to the Manual sets out the fees and disbursements payable to Judicare legal practitioners for criminal trials, criminal appeals and related matters.

4.5.2 Civil cases, appeals and non-litigious work

Annexure C to the Manual covers the fees and disbursements payable to Judicare legal practitioners for civil cases, civil appeals, *non-litigious* work and Impact Litigation matters.

4.5.3 Payment of travel, subsistence and accommodation costs

Judicare practitioners are required to provide proof of address of the main office from where they practice. Such information may be required upon registration or by submission of an affidavit confirming the address from which the practitioner is practising. Legal Aid SA will, in turn, calculate and provide an automated distance from each office of the Judicare practitioner, to any court under which the practitioner is registered.

Claims for travel, subsistence and accommodation will be paid as follows:

(a) Legal Aid SA will reimburse Judicare practitioners for the cost of travelling from their office to court, up to a maximum of 150km per return trip. No reimbursement for travel will be paid for the first 30km of any travel claim. Therefore the maximum kilometres that Legal Aid SA will pay for travel per return trip will be 120km.

(b) The electronic Legal Aid Administration system will give preference to Judicare practitioners in accordance to the following preferences:

- Preference 1 – Total travel between 0km and 50km;
- Preference 2 – Total travel between 51km and 100km;
- Preference 3 – Total travel between 101km and 150km;
- Preference 4 – Total travel greater than 150km.

(c) Where there is no Judicare practitioner registered in that area or where such registered practitioner is not available, a practitioner registered outside such area, but accredited to service such area, may be used provided prior approval is sought from the ROE.

(d) Where the court day proceeds continuously beyond 1 day, and the distance that the Judicare practitioner will travel is greater than 130km single trip, then Legal Aid SA will provide an accommodation allowance in terms of its policy.

(e) In HC matters, the practitioner will be entitled to claim an accommodation allowance on the day before the start of the trial where the travelling distance

is greater than 130km single trip. In all other courts, accommodation before the date of the trial will be paid only if authorised by the JCE.

(f) Legal Aid SA will pay a subsistence allowance for each day that the practitioner is entitled to an accommodation allowance.

(g) Legal Aid SA will pay a Judicare practitioner for travel to a prison in respect of one consultation with her/his client on the same terms outlined in (a) above. Travel for any further consultations at prisons with the same client must be authorised in writing by the JCE prior to the consultation. Such authorisation must accompany any claim for payment.

For purposes of clarification, Legal Aid SA will only pay for disbursements relating to travel, accommodation and subsistence once per day. Judicare practitioners may not be paid these disbursements in each and every matter that they attend to at the same court on any one day. Judicare practitioners are required to keep proper notes and ensure that they do not duplicate these claims for any one day for different matters.

4.6 Submission of accounts

When rendering an account, legal practitioners have a duty to report fully to the JCE on the outcome of a matter.

All accounts must be submitted to Legal Aid SA by no later than four months after the finalisation of the matter. The practitioner who fails to submit her/his account within four months of finalisation forfeits the right to payment.

Accounts for criminal trials and civil matters must be submitted to Legal Aid SA on the respective prescribed forms. For the convenience of legal practitioners in submitting accounts, Legal Aid SA has provided a checklist form which may be referred to in submission of accounts.

Account enquiries must be submitted to Legal Aid SA on the prescribed form with all necessary supporting documentation.

Except where interim accounts for fees and disbursements are allowed, the legal practitioner submitting an account to Legal Aid SA must account fully for all services rendered and all disbursements incurred on completion of the matter. Where required, the disbursements must be verified by original vouchers submitted to Legal Aid SA simultaneously with the account.

Apart from permitted interim accounts, the legal practitioner should account to Legal Aid SA once only in a particular legal aid matter.

In cases where an advocate is instructed, the legal practitioner must ensure that the advocate's account is submitted to Legal Aid SA together with her/his own account so that a proper evaluation of both accounts and the total costs of the case can take place.

The legal practitioner must also ensure that the advocate's account is in accordance with the prescribed tariff.

4.6.1 Date when account payments are due

Legal Aid SA will only pay the fees and disbursements due to a legal practitioner when all of the following requirements are met:

- The mandate has been finalised (unless interim payments have been authorised by the JCE).
- Any reports on the outcome of the *matter,* as required by this Manual, have been submitted to the JCE.
- An account drawn up in accordance with the requirements of this Manual has been submitted to the JCE.
- Legal Aid SA has received all necessary documents and vouchers.
- Legal Aid SA has had 30 calendar days to tax, check, approve and process payment to the legal practitioner.

4.6.2 Account assessment and taxation

Legal Aid SA has a right to tax any fees list, account invoice or *bill of costs* rendered by the practitioner and may delegate taxation to a person or persons of its choice.

This right applies to all actions after legal aid instruction and to the settlement of any moneys due by Legal Aid SA.

4.7 Prescription of accounts

4.7.1 Beginning of prescription

Once a legal aid matter has been finalised, the legal practitioner must submit her/his account as soon as reasonably possible, but in any event within four months of such finalisation. Prescription starts running from the date on which the matter was finalised.

Legal Aid SA has 30 days after receipt of an account to tax the account, and then to pay, partially pay or refuse to pay the account. If the practitioner does not institute arbitration proceedings within three months of being notified of the taxation of the account, the practitioner's claim will also prescribe.

The Legal Executive (LE) has the discretion to extend the period within which to institute arbitration proceedings by not more than six months where satisfied that the

extended period is required to tax and pay/partially pay the account and/or negotiate a settlement in relation to any account. Within one year after finalisation of a matter, the LE also has the discretion to authorise taxation and payment/part payment of an account, which was submitted within the compulsory four month period, where satisfied by written representations from the practitioner that there are satisfactory reasons for the delay in instituting arbitration proceedings. Any exercise of discretion by the LE in terms of this paragraph shall be in writing.

4.8 Disputing accounts

If the amount paid by Legal Aid SA differs from the account rendered by the practitioner or her/his subcontractors by more than 5%, and the practitioner wishes to dispute the correctness of the taxation by Legal Aid SA, then the provisions of this Manual dealing with disputes over practitioner's accounts must be followed.

4.8.1 Procedures for disputes over a legal practitioner's account

Legal Aid SA may withhold payment of all and any moneys due to an instructed legal practitioner until the finalisation of any dispute relating to account items, or any ethical or disciplinary matter linked to this dispute.

If negotiations fail, a dispute must be declared within three months after Legal Aid SA notifies the practitioner that the account has been taxed. The account received by Legal Aid SA must have been in proper form with all necessary supporting reports, vouchers, certificates and documents as required by this Manual.

The legal practitioner must deliver the details of the dispute to Legal Aid SA on a **Declaration of Dispute standard form**.

4.8.2 Referral to arbitration

Either the practitioner or Legal Aid SA may request that the dispute is referred, with legal representation, to *arbitration* by a single arbitrator at a time determined by the arbitrator.

4.8.3 Place of arbitration and selection of arbitrator

The arbitration must be conducted in the province where the legal practitioner practices and at the relevant Justice Centre that issued the legal aid instruction.

A single arbitrator will conduct the arbitration and must be:

- Selected by mutual agreement between the parties, or if there is no agreement
- Nominated on the application of either party by the existing chairperson of the Association of Arbitrators.

4.8.4 Effect of arbitration proceedings

A practitioner cannot litigate against Legal Aid SA relating to the payment, part payment or non-payment of accounts unless the dispute has been arbitrated.

4.9 Judicare quality monitoring

In order to ensure that clients are provided with competent legal representation, Legal Aid SA conducts quality assessments of Judicare practitioners as authorised by the Legal Aid South Africa Act.

Assessment is conducted with regard to court observations and Judicare files.

4.9.1 Assessment of Judicare files

The purpose of the assessment of Judicare files is to ensure that Judicare practitioners' files meets Legal Aid SA's quality standard.

4.9.2 Court observation

The purposes of court observation monitoring is to improve the quality of the court performance of Judicare practitioners. JC court observation assessments are conducted by the Legal Quality Assurance Unit.

The Legal Quality Assurance Unit practitioner will after the file assessment and/or court observation hold a feedback session with the practitioner to discuss the outcome of the file assessment/court observation as well as any findings and corrective measures that the Judicare practitioner needs to be aware of and implement.

Chapter 5: Co-operation Agreement Procedures

5.1 Procedure for requesting, processing and approving Co-operation Agreements

5.1.1 Notice of Request for Proposals

Any request for Co-Operation Agreement proposals shall be done by publishing such request in accordance with the Supply Chain Management (SCM) Policy and Procedures of Legal Aid SA.

5.1.2 Request for proposals

Requests for proposals shall be prepared by the duly appointed Bid Specifications Committee. This Committee shall be constituted in accordance with the Legal Aid SA SCM Policy and Procedures in consultation with the Legal Services Technical Committee (LSTC). The LSTC is established by the CEO in terms of section 16(2) of the Act.

The Bid Specification Committee shall submit the request for proposals to the LSTC for approval before publication.

5.1.3 Procedure for screening proposals

An evaluation committee must evaluate all proposals received and make recommendations to the LSTC which must approve all proposals. Where required in terms of the Legal Aid SA SCM Policies and Procedures, such proposals should be submitted to the Bid Adjudication Committee (BAC) for final approval.

(a) Forensic checks

Every proposal submitted to the LSTC will be screened to ensure *compliance* with the Co-operation Agreements Policy as contained in the Regulations.

The LSTC may carry out forensic investigations it considers necessary to satisfy itself on the integrity of any proposed Co-operation Partner, or any of its staff or office bearers.

(b) Declaration of interest

Any member of the LSTC having any financial or other interest in conflict or potential conflict with the interests of Legal Aid SA relating to any Co-operation Agreement proposal, must declare this interest in writing to the Chairperson of the LSTC before the proposal is discussed.

After a member of the LSTC declares an interest, the member must:

- Take no part in the discussion and decision on the proposal, and

- Excuse herself/himself from the part of any meeting at which the proposal is considered.

(c) Screening of unsolicited proposals

In addition to the requirements for submission of proposals, an unsolicited Co-operation Agreement proposal must provide the following information:

- The product or service presents a new and cost-effective method of service delivery;
- A concise title and abstract (approximately 200 words) of the proposed product or service;
- A statement of the objectives, approach and scope of the proposed product or service;
- A statement describing how the proposal is demonstrably innovative and supported by evidence that the proponent is the sole provider of the innovation;
- A statement of the anticipated benefits or cost advantages to the institution, including the proposed price or total estimated cost for providing the product or service in sufficient detail to allow a meaningful evaluation by the institution;
- A statement showing how the proposed project supports the institution's strategic growth and development plan and its other objectives; and
- The period of time for which the proposal is valid for consideration, which may not be less than six months.

5.2 Monitoring and Managing Co-operation Agreements

5.2.1 General monitoring and reporting provisions

Before any Co-operation Agreement is concluded or renewed, the LSTC may prescribe the completion of *due diligence procedures* it considers necessary.

Co-operation Partners must submit:

- Monthly reports of progress to Regional Office Executives (ROEs) and an annual report to the LSTC.
- Monthly statistics to the Regional Office on or before the third day of each month.

5.2.2 Non-compliance or breaches

The ROE must inform the LSTC about any *non-compliance* with contractual guarantees or a *breach* of any Co-operation Agreement by a Co-operation Partner.

The LSTC must then, in good time, instruct appropriate officers of Legal Aid SA to stop payment of any instalments or to take steps to terminate the Co-operation Agreement.

5.2.3 Financial procedures

Regional Offices will be responsible for processing the payment of the moneys due to the Co-Operation Partner on a monthly basis, subject to the Co-operation Partner *complying* with the provisions of the Co-Operation Agreement.

ROEs must also monitor compliance by Co-operation Partners with:

- Contractually prescribed financial procedures;
- Accepted financial management procedures; and
- The timeous submission of acceptable financial statements.

If there is any non-compliance, the ROE in consultation with the Chief Financial Officer and the NOE/CLE will consider and implement *remedies* to bring the Co-operation Partner back into line or to terminate the Co-Operation Agreement. Any non-compliance and action taken on it must be reported to the LSTC.

Chapter 6: Agency Agreements

In terms of section 4(1)(a)(iii) of the Act, the Board may procure the services of legal practitioners in private practice by entering into contracts with them to render legal services on behalf of Legal Aid SA clients.

In order to efficiently and effectively provide legal representation in certain areas which are too remote and uneconomical for Legal Aid SA staff to provide legal representation, Legal Aid SA can enter into an Agency Agreement with a local law firm to render services to Legal Aid SA clients on a retainer basis.

6.1 Procedure for requesting, processing and approving Agency Agreements

All proposals to establish an Agency Agreement must be considered and approved by the LSTC and BAC where required in terms of Legal Aid SA SCM Policies and Procedures.

A request for proposals must be published as per applicable SCM Policies and Procedures of Legal Aid SA.

An evaluation committee must evaluate all proposals received and make recommendations to the LSTC, which must approve all proposals. Where required in terms of the Legal Aid SA SCM Policies and Procedures, such proposals should be submitted to the BAC for final approval.

6.2 Payment of Agency Partner

Legal Aid SA shall pay to the Service Provider a fixed monthly fee calculated by multiplying the agreed minimum number of cases with the agreed costs per case for the type of court to be served by the practitioner.

6.3 Requirements to be considered as an Agency Partner

Private law firms must meet the following requirements to be eligible to be considered an Agency Partner:

- The practitioner must be admitted to practice law within the area regulated by the respective Law Society;
- The practitioner must have a certificate of good standing with the Law Society;
- The practitioner must have a valid Fidelity Fund Certificate;
- The practitioner must have registered on the National Treasury's Central Supplier Database and complied with all relevant requirements;
- The practitioner must have a law firm within the specified area where an Agency Partner is sought or be about to establish a law firm in that area.

If one of the requirements are not met, a practitioner may be disqualified from being considered as an Agency Partner.

6.4 Quality assurance

Agency Agreement Partners are subject to Legal Aid SA's quality management programme, quality file reviews and quality court observations which are conducted on all Agency Partners at set intervals.

No legal professional privilege shall exist in respect of files dealt with by an Agency Agreement Partner on behalf of Legal Aid SA clients and Agency Agreement Partners are obliged to hand over all such files upon request, in compliance with the requirements of the Legal Aid SA Act.

6.5 Managing Agency Agreements

ROEs must monitor the performance of all Agency Agreement Partners on a monthly basis.

On a monthly basis, the JCE will review the number of new and finalised matters received at the JC per Agency Agreement and compare this with the provisions of the Agency Agreement.

Depending on whether the monthly retainer that is paid to the Agency Partner is appropriate in relation to the number of new and finalised Agency matters, the JCE will make recommendations to the ROE to either increase or decrease the monthly retainer.

The JCE will also engage on a quarterly basis with the relevant court stakeholders at whose court the Agency Agreement has been implemented to determine and resolve any problems arising from the work done by the Agency Partner.

If the Agency Partners do not comply with contractual guarantees or breach an Agency Agreement, the ROEs must inform the LSTC as to the way forward and ensure that the Agency Partner complies with the relevant provisions of the contract or take steps to terminate the agreement.

Chapter 7: Impact Litigation Services

7.1 Nature of Impact Litigation Services

In the execution of its mandate, Legal Aid SA has diversified its areas of funding so that it can extend its assistance to as many indigent persons as possible. From time to time, matters arise in which the opportunity exists for Legal Aid SA to undertake or fund litigation or other legal work which has the potential to positively affect the lives of a far larger number of indigent persons than the person or persons to whom legal service is rendered directly.

7.2 Procedure for submission, evaluation and approval of proposals

7.2.1 Procedure for submission of proposals

A proposal for the rendering of Impact Litigation Services shall be in writing and shall set out:

(a) The nature and extent of the proposed legal services, as well as evidence that the services offered will benefit a substantial number of indigent people.

(b) Sufficient facts, expert opinion (where appropriate) and legal submissions to enable an assessment of whether the proposed litigation (litigious services) has a reasonable prospect of success, or of whether the proposed legal services (non-litigious legal services) will enable a beneficial strategic intervention that will significantly affect the lives of a group or a sizeable portion of a group.

(c) A detailed budget for the Impact Litigation Services, setting out details of each of the stages of litigation and the total expenditure planned at each stage, including cash flows and when said funds would likely be required.

(d) Clear deliverables, key performance indicators and timeframes for each of the various stages of litigation, as well as the legal representative's experience in the area of Impact Litigation.

(e) The proponent's name, address, identification or registration number (if a corporation), VAT registration number and the contact details of its authorised representative.

(f) Identification of any confidential or proprietary data not to be made public.

(g) Proof of registration with the National Treasury Central Supplier Database and compliance with the relevant requirements.

(h) A declaration from the proponent to the effect that the offering of the unsolicited proposal was not as a result of any non-public information obtained from officials of the relevant institution or any other institution.

A manager will be responsible for the co-ordination of the activities of all other service providers on the team and will also be responsible for the submission of regular monthly reports and a final report on finalisation of the matter.

The final report must include:

(a) The areas of law that may have been tested before court.

(b) The relevant legislation, if any, and other references used in the litigation of the matter.

(c) The areas of law, if any, which may need to be reviewed by a relevant law-making or regulatory body.

Where legal services are to be provided by legal practitioners who are not employed by Legal Aid SA, the proposal will either be required to set out a programme for the transfer of the required skills to appropriate employees of Legal Aid SA or to justify the outsourcing of these legal services operationally.

Where the principal contractor (e.g. attorney) who will manage and co-ordinate the activities of subcontractors (e.g. advocates, expert witnesses) is not employed by Legal Aid SA, Legal Aid SA will provide legal aid either fully or partially, on condition that the main service provider enters into a written agreement with Legal Aid SA for services offered.

Where the main service provider is a legal practitioner in private practice, the legal practitioner must be *accredited* from time to time according to any accreditation rules prescribed by Legal Aid SA.

Where the main service provider is a NGO, the NGO shall comply with all the requirements prescribed by Legal Aid SA.

In addition to Impact Litigation Services undertaken or funded by Legal Aid SA as a result of proposals submitted to it, Legal Aid SA may itself initiate the delivery of Impact Litigation Services.

7.2.2 Procedure for evaluating proposals for Impact Litigation Services

All the proposals for possible Impact Litigation Services are sent to the Impact Litigation Unit, which in turn assesses the matter and submits the proposals to the Constitutional Case Management Committee (CCMC) for consideration. The CCMC is established by the CEO in terms of section 16(2) of the Act.

7.2.3 Procedure for approval of Impact Litigation Services

The CCMC must approve all Impact Litigation matters irrespective of the expenditure authority of any officials of Legal Aid SA.

The NOE and CLE may jointly approve any urgent matters where the total cost of the matter is less than R50 000 (including VAT) or they may authorise initial proceedings in a matter to prevent prescription or default. These matters must be reported to the CCMC at its next meeting.

All Impact Litigation matters approved by the CCMC shall be reported to the Board at its next meeting.

All Impact Litigation matters should be approved in accordance with the requirements of the Legal Aid SA SCM Policy. Where the proposals for possible Impact Litigation exceed R500 000, the proposal shall be referred with a recommendation from the CCMC to the BAC for approval.

7.3 Appeal against decision of the CCMC

A proposer has the right of appeal to the CEO against the refusal to grant legal aid for a proposed Impact Litigation matter.

The Manager of the Impact Litigation Unit shall inform the proposer of this right and, if requested within three months of being informed of this right, the Chairperson of the CCMC shall give detailed reasons for the refusal of legal aid.

The grounds of appeal must be submitted to such Manager in writing. The Manager must forward these to the CEO together with the applicable documents and her/his comments.

7.4 Tariffs of fees payable by Legal Aid SA

The tariffs for Impact Litigation Services are contained in Annexure C to the Legal Aid Manual.

7.5 Obligation of service provider rendering Impact Litigation Services

The service provider is obliged to render legal services within the budget approved and in accordance with tariffs set out in this Manual and in terms of the agreed contract.

The service provider must ensure that Legal Aid SA is provided with quarterly progress reports with regard to the matter, must maintain integrity and confidentiality in handling the matter and must ensure that on finalisation of the matter the outcome is timeously reported to Legal Aid SA. Any media coverage should acknowledge the funding/support provided by Legal Aid SA.

In order to comply with Treasury regulations, the service provider must ensure that they are registered with the National Treasury Central Supplier Database, that their tax clearance status with SARS for both the attorney and advocate on the legal team

remain valid for the duration of the agreement and disclose fully to Legal Aid SA any funding received from another source for the same matter.

In order to ensure a proper working relationship with Legal Aid SA, the service provider is required to seek permission from Legal Aid SA specifically on issues relating to budget or additional work that may be outside the agreed budget as per the contract but related to and necessary for the proper conduct of the matter.

7.6 Obligations by Legal Aid South Africa

Legal Aid SA reserves the right, upon successful final completion of the intended litigation, to request that fees and disbursements, including all accounts submitted by the service provider, be taxed by the Taxing Master having jurisdiction on this matter.

Legal Aid SA's internal auditors may be entitled to satisfy as to:

- The quality of service rendered;
- The quantity of legal services rendered;
- The cost of the service rendered;
- The appropriate utilisation of funding provided by Legal Aid SA.

7.7 Procedure on composition of legal teams

7.7.1 Introduction

In terms of the Act, the Board of Legal Aid SA may perform all that is necessary or expedient to achieve its objects including procuring the services of legal practitioners in private practice by entering into contracts or agreements with them and other entities.

In Impact Litigation matters legal services may be procured mainly from institutions, private law firms, NGOs or institutions who will brief counsel, or by Legal Aid SA procuring the services of advocates who are not in the employ of Legal Aid SA.

The procurement of such services needs to ensure fair and equitable briefing that is broadly representative of the South African people and the need to address the imbalances of the past.

Legal Aid SA as a supplier of legal work is duty bound to provide access to legal work that may improve the skills and expertise of a practitioner.

7.7.2 Purpose

The purpose of the briefing pattern procedures is to ensure a just and equitable legal team composition for previously disadvantaged advocates.

7.7.3 Definition

Broad-Based Black Economic Group (B-BBE Group) is a generic term which means Africans, Coloureds and Indians—

(a) who are citizens of the Republic of South Africa by birth or descent; or

(b) who became citizens of the Republic of South Africa by naturalisation

(i) before 27 April 1994; or

(ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

7.7.4 Application of briefing patterns

The briefing patterns procedure is applicable to Impact Litigation matters.

7.7.5 Distribution of briefs

(a) Procedure for sourcing of outside counsel

In order to source outside counsel all reasonable endeavours should be made to:

- Identify counsel from the ranks of the B-BBE Group in specific practice and interest areas;
- Ensure that counsel receives a fair and equitable share of briefs having regard to the number of briefs delivered to counsel in any one year, the nature and complexity of the work involved and the fee value of such briefs;
- Strive to achieve the briefing of at least 50% of counsel from the B-BBE Group as defined of which at least 30% overall should be women in any particular financial year;
- Regularly monitor and review the engagement of counsel from the B-BBE group; and
- Regularly report internally on the extent to which the said measures have been implemented.

In instances where a law firm/institution submits a proposal requiring funding for at least two counsel, the CCMC must ensure that 50% of the members of the team derive from the B-BBE group unless it can on reasonable grounds be shown that despite all efforts this is not possible.

(b) Internal sourcing of counsel

In instances where matters are dealt with internally by the Impact Litigation Unit or referred to it by a Justice Centre, counsel will be briefed on the following basis:

- Where there are two counsel, one of them shall be from the ranks of the B-BBE group unless it can on reasonable grounds be shown that despite all efforts this is not possible. Where the senior counsel is from the ranks of B-BBE, then the 50% apportionment will not apply and the junior counsel can be from the same group.
- Preference shall be given to female counsel from the ranks of the B-BBE group, depending on availability.

7.7.6 Compilation of list for counsel

The Manager of the Impact Litigation Unit must compile and review a list of counsel falling within the BBBEE group regarding their relevant practice area.

Such a manager must ensure that a call of inclusion to the list be submitted to accredited advocate's associations.

7.7.7 Report to Board

The CCMC, established under the Regulations, must report quarterly to the Board regarding the distribution of briefs, detailing:

(a) The number of briefs delivered;
(b) The nature and complexity of work involved;
(c) The achievement of the targets as per (a); and
(d) The fee value of such briefs.

Chapter 8: General Administrative Matters

8.1 Legal Aid South Africa Act

These administrative procedures relate to the general administration and management of legal aid which are necessary for the implementation of the Act.

8.1.1 Delegation of NOE/CLE authority

The NOE/CLE may, in consultation with the CEO, delegate some or all of the authority the NOE/CLE has under this Manual:

- This delegation must be in writing and signed by the NOE/CLE.
- The NOE/CLE may delegate powers to other officers or agents of Legal Aid SA.
- The NOE/CLE may delegate to these officers or agents the authority to further delegate.
- The NOE/CLE may not delegate any authority to any person who is not an employee of Legal Aid SA or an employee of the Department of Justice and Constitutional Development.

8.1.2 Suspending services

Legal Aid SA may suspend the granting of legal aid for certain services from time to time due to financial and/or capacity constraints.

8.1.3 Restrictions on costs

Legal Aid SA may restrict legal costs in certain kinds of cases from time to time.

8.1.4 Discretion on increased fees

(a) Limited increased fees

In general, only fees set out in Legal Aid SA tariffs will be allowed. However, ROEs and the NOE/CLE have the discretion to permit payment of limited increased fees in very exceptional cases.

The NOE/CLE must:

- Maintain a register of all increased trial day fees allowed at Legal Aid SA's National Office and Regional Offices.
- Report to the Board on all increased trial day fees granted.

The authorisation of additional work at standard tariff rates does not need to be reported to the Board.

(b) Interim fees

The NOE/CLE has the discretion to authorise the payment of interim fees in any matter in which a legal practitioner makes written representations.

Interim accounts for practitioners' fees are paid only if the NOE/CLE (or a person having been delegated authority from the NOE) has authorised such payments; or if there have been five or more appearances in a month in a criminal case in the High Court; or if a High Court case has been postponed for more than three months.

8.1.5 Procedures dealing with increased fees

(a) Criminal cases

If ROEs or the NOE exercise their discretion under the criminal tariffs to authorise increased fees or *disbursements* for any legal practitioner, the NOE must record in a report and submit to Legal Aid SA at its next ordinary meeting, details of:

- The case in which discretion was exercised.
- Any increased or additional fees and disbursements to any legal practitioner.
- The reasons for the exercise of discretion in the case.

(b) Impact Litigation Services

The authorisation of fees or disbursements on the scale applicable to Impact Litigation *matters* may only be done by the CCMC, except where the amount involved is less than R50 000 including VAT. In such an instance, the NOE and CLE jointly may authorise the fees and disbursements.

Telephonic authorisation may be obtained for the proposed action in urgent circumstances, but the legal practitioner has a duty to confirm this authorisation in writing. Only then will the granting of authorisation be *deemed* to be completed.

8.1.6 Medical costs

Legal Aid SA does not pay costs related to:

- The medical treatment, operations or hospitalisation of the applicant.
- Travel for visiting medical practitioners.
- Clients attending a medical consultation or examination.

Legal Aid SA is only responsible for rendering and making legal services available.

8.1.7 Opposing party also on legal aid or simultaneously applying for legal aid

If it comes to the notice of a legal manager that both parties have applied for legal aid, or to the legal practitioner who has been instructed that the opposing party is also acting on legal aid, no further proceedings in the matter should be taken, except to prevent substantial prejudice to either of the parties. The practitioner must notify the JCE immediately and provide details.

The JCE must refer the matter to the relevant ROE or ROEs (where legal aid has been granted in more than one region) who in all matters, save for Impact Litigation matters

that are approved by the CCMC, shall have the discretion to decide to grant legal aid for both parties/applicants in the same matter after considering the following:

- The written merit reports prepared by the relevant practitioners as per the Legal Aid Manual;
- Whether both parties have an arguable case or not;
- The nature of the dispute/proceedings between the parties and the rights sought to be protected;
- The complexity of the issues of fact and/or law or both;
- The likelihood of prejudice to be suffered if legal aid is not continued/granted to either party/applicant;
- The likelihood or unlikelihood of the parties reaching a settlement;
- Ensuring parity of arms where any of the parties may be substantially prejudiced if not provided with legal representation; and
- Any other relevant factor that may be necessary.

8.1.8 Security and costs in civil matters

(a) No funds for security

Legal Aid SA does not provide funds for the purpose of giving security. In matters where the sheriffs require securiy or indemnity to effect a writ, and where such requests are in accordance with the rules of court and can be sustantiated by the sheriffs, then the CLE and/or persons delegated by the CLE in consultation with the CEO, are authorised to provide the necessary indemnity to sheriffs.

(b) Exemptions from giving security

A client is exempt in certain circumstances from the duty to give security for the costs of an opposing party and to pay certain court fees. This is covered in Rule 47A of the Uniform Rules; Rule 6(6) of the Rules of the Supreme Court of Appeal; Rules 51(1) and 51(4) of the Magistrates' Court Rules, and the Rules of the Divorce Court.

(c) Payment of security before granting legal aid

If any sum must be deposited as security, legal aid must not be granted until it is clear that the client has the means to make payment of this security.

(d) Security under Magistrates' Court Act Rules

Legal practitioners should note the effect of the case of *Mthetwa and Others v Diedericks and Others 1996 (7) BCLR 1012 (N)* on the requirement of security for costs set out in Rule 49(1) of the Magistrates' Courts Rules.

A legal aid litigant does not have to provide security in a rescission of judgment application in the Magistrates' Courts.

8.1.9 Fraud and abuse of legal aid

This section covers possible fraud and abuse by legal aid applicants, *legal aid recipients* or legal practitioners.

Legal Aid SA seeks to ensure that, as far as possible, legal representation is offered to indigent litigants. Therefore, it is important that the principles and rules of this Manual are enforced so as to:

- Enable as many people as possible to receive legal aid, and
- Ensure that the system of legal aid and Legal Aid SA are not brought into disrepute as a result of the conduct of legal practitioners contrary to the letter and spirit of this Manual.

Persons receiving legal aid applications, Legal Aid SA employees or legal practitioners instructed by Legal Aid SA who may have reason to believe that a legal aid applicant has committed fraud or abused legal aid must immediately and fully report this in writing to the relevant JCE. Other interested parties also have the right to take up the alleged fraud.

8.1.9.1 Procedure for dealing with suspected fraud or abuse

(a) Copy of report to person suspected

The JCE must provide a copy of a report on the suspected fraud/abuse to the legal aid applicant or recipient, and give her/him a reasonable opportunity to respond to the allegations:

- The time given is normally at least two weeks.
- Any response must be addressed to the JCE in writing.
- Where the legal aid recipient is illiterate, the complaint must be communicated to the legal aid recipient orally and the JCE must appoint a Legal Aid SA employee to record the legal aid recipient's response.

(b) JCE's decision on steps necessary

After receipt of the response from the legal aid applicant or recipient, or if no response is received after a reasonable time, the JCE may decide, after investigating further, on one or more of these steps:

- Terminating legal aid.
- Charging the legal aid applicant or recipient with fraud, where applicable.
- Starting civil action against the legal aid applicant or recipient.
- Authorising continuation of legal aid where no fraud or abuse is proved.

8.1.10 Forensic investigation

In appropriate cases, the Internal Audit Executive may order a forensic investigation of the financial circumstances of the applicant or recipient before or after legal aid is granted.

8.1.11 Legal Aid South Africa's steps to protect its interests

(a) Withholding payments to practitioners

Legal Aid SA reserves the right to withhold settling any outstanding accounts due to legal practitioners until all reporting duties have been complied with, or any dispute resolved.

(b) Checking on practitioners

If circumstances warrant this, the JCE may monitor the performance of a legal practitioner acting on a legal aid basis.

8.1.12 Legal practitioner's duty: postponements

It is the duty of every legal practitioner acting on behalf of Legal Aid SA to ensure that the matter is dealt with as efficiently and speedily as possible:

- Every effort must be made to avoid any delay or postponement in proceeding with a case.
- Postponements should be avoided, bearing in mind the right of an accused to a withdrawal of the charge, or to have the trial proceeded with.

8.1.13 Receiving moneys after legal aid instruction

No additional moneys that are not due under this Manual or a court order may be received directly or indirectly by a legal practitioner from the client or from any other source after receiving a legal aid instruction for a particular matter.

In this context, 'received' includes moneys deposited to a trust account. This conduct is also unethical conduct by the legal practitioner or Candidate Attorney and may be referred to the relevant Law Society for investigation.

In addition, any *salaried legal practitioner*, *Candidate Attorney* or employee of Legal Aid SA who accepts any money that is not due under this policy or a court order from a legal aid applicant is guilty of misconduct.

8.1.14 Exclusion of private clients in Judicare matters

Save for the written consent of the JCE, no legal practitioner who has accepted a Judicare instruction may simultaneously act for any private client in the same matter.

8.1.15 Extending the legal practitioner's brief

A legal practitioner who has been briefed must not give legal aid assistance beyond the scope of her/his instruction without the written consent in advance by the JCE.

Telephonic authorisation may be obtained for the proposed action in urgent circumstances, but the legal practitioner has a duty to confirm this authorisation in writing. Only then will the granting of authorisation be *deemed* to be completed.

8.1.16 Costs in civil cases

(a) Cost orders against legal aid recipients

Legal Aid SA does not pay nor contribute towards cost orders awarded against legal aid recipients.

All legal practitioners carrying out legal aid instructions have a duty to inform legal aid recipients about the possibility of getting a cost order against them.

(b) Costs in legal aid cases

Once legal aid has been granted to a client in a civil case, the aspect of costs changes:

- The interest in costs is ceded to Legal Aid SA, together with a percentage of the settlement amount of the case, as determined by Legal Aid SA from time to time – also called the 'benefit' to Legal Aid SA.
- The client has no further interest in the issue of costs.
- Legal Aid SA pays the legal practitioner according to this Manual.

(c) Duty of practitioners to protect Legal Aid South Africa's interests

The attorney who acts for the legal aid applicant in her/his capacity as *plaintiff/*applicant or *defendant/*respondent must:

- Include a claim for costs in the summons, application, plea, counter-claim or notice of opposition.
- Try throughout proceedings to recover costs or to enforce an order for costs against the unsuccessful party.

Legal practitioners involved in legal aid cases must ensure that they conduct and finalise cases in a way that properly considers the interests of Legal Aid SA.

Legal Aid SA reserves the right to refuse payment of any costs that arise without its consent or without its interests being considered.

8.1.17 Legal Aid South Africa's share of settlements

(a) Payment of benefit due to Legal Aid South Africa

When a litigant, who is being assisted by Legal Aid SA, obtains a financial benefit as a result of a settlement or judgment at any stage after legal aid was granted, the legal practitioner must deduct a percentage of the benefit and pay it to Legal Aid SA. This percentage is determined by Legal Aid SA from time to time.

The percentage benefit that is currently payable to the Board is as follows:

- Benefit obtained: R0 to R20 000 = 0%
- Benefit obtained: R20 001 to R100 000 = 5% of the amount over R20 000
- Benefit obtained: Above R100 000 = R4 000 plus 10% of the amount over R100 000

The sum owing is known as the 'benefit' to Legal Aid SA, and is paid whether or not legal costs have been recovered. The benefit to Legal Aid SA is calculated on the balance of the financial benefit to client after deducting any costs included in a lump sum award.

(b) Including Legal Aid South Africa's benefit

Legal practitioners must take care when advising clients on any proposed lump sum settlement or any settlement which provides for only a partial contribution to costs. Legal Aid SA will recover attorney and client costs (less any partial contribution) from the lump sum. Legal Aid SA will in addition recover the 'benefit due to the Board' from the remainder of the lump sum. The result is that a client accepting a lump sum settlement may ultimately only receive up to 50% of the sum settled for.

On recovery of the party and party costs and the benefit due to Legal Aid SA, the practitioner must pay these amounts to Legal Aid SA.

If a practitioner sends a bill of attorney and client costs for an amount greater than the costs recovered on a party-and-party basis, then the difference between the attorney and client costs and the party-and-party costs must be paid from the capital amount recovered:

- This difference may only be paid up to a maximum of 50% of the capital amount.
- The ROE may waive the recovery of the difference in writing.

(c) Duty of practitioner

It is the duty of a legal practitioner acting on a legal aid basis to inform the client of Legal Aid SA's share of settlements, and to ensure that this is paid to Legal Aid SA, together with costs.

8.1.18 Tenders, settlements and payments into court

(a) Settlements in civil cases

A legal practitioner instructed in a civil or divorce case may at her/his discretion negotiate a settlement and, with the consent of the JCE, waive a claim for costs or contribution towards costs.

If the JCE grants authority telephonically, the legal practitioner must confirm the circumstances and the authority in writing. The practitioner must be aware of the rule of practice in litigation that 'costs follow the unsuccessful party'.

(b) Legal Aid South Africa costs as part of settlements

Settlements for an all-inclusive amount (including costs) must be avoided as far as possible.

Where this is not possible, the legal practitioner must inform the legal aid litigant that:

- The costs owing to Legal Aid SA under section 20 of the Act or otherwise, were included in the lump sum, and will be paid to Legal Aid SA out of this lump sum settlement.
- A party and party *bill of costs* must be drawn up to determine the amount owing to Legal Aid SA that is part of the lump sum settlement.

Annexure A

CONTRIBUTION TABLES

Table A – Cost Recovery per Court Type

	Gross Monthly Income less Income Tax	Cost Recovery Percentage of Anticipated Cost			Cost Recovery Amount Taken at Anticipated Cost with regard to the Duration of the Matter							
		DC	RC	HC	District Court				Regional Court			
					1 Trial Day	2-3 Trial Days	4-5 Trial Days	> 5 Trial Days – Per 5 trial days or part thereof	1 Trial Day	2-5 Trial Days	6-10 Trial Days	> 10 Trial Days – Per 10 trial days or part thereof
1	Up to R8 000	0%	0%	0%								
2	R8 001– R12 500	35%	25%	10%		R1 070	R1 926	R2 782		R1 484	R3 180	R4 240
3	R12 501– R20 000	75%	40%	20%		R2 293	R4 128	R5 962		R2 374	R5 088	R6 784
4	R20 001– R30 000	95%	95%	55%			R5 228	R7 552		R5 639	R12 084	R16 112
5	More than R30 000	100%	100%	90%				R7 950				R16,960

	Gross Monthly Income less Income Tax	Cost Recovery Percentage of Anticipated Cost			Cost Recovery Amount Taken at Anticipated Cost with regard to the Duration of the Matter						
		DC	RC	HC	High Court						
					1 Trial Day	5 Day Trial	10 Day Trial	15 Day Trial	20 Day Trial	> 20 Day Trial – Per 20 trial days or part thereof	
1	Up to R8 000	0%	0%	0%							
2	R8 001– R12 500	35%	25%	10%		R1 530	R3 060	R4 590	R6 120	R7 650	
3	R12 501– R20 000	75%	40%	20%		R3 060	R6 120	R9 180	R12 240	R15 300	
4	R20 001– R30 000	95%	95%	55%		R8 415	R16 830	R25 245	R33 660	R42 075	
5	More than R30 000	100%	100%	90%			R27 540	R41 310	R55 080	R68 850	

Note 1 The cost recovery amount is based on the Judicare Criminal Tariffs

The Grey shaded area indicates that the applicants do not qualify for legal aid assistance

Table B – Monthly Contribution per Income Bracket							
	Gross Monthly Income less Income Tax				Rate of Monthly Contribution		
		DC	RC	HC			
1	Up to R8 000	0%	0%	0%		Min Contribution	Max Contribution
2	R8 001–R12 500	35%	25%	10%	Minimum of R300 + 10% of the amount over R10 000	R300	R550
3	R12 501–R20 000	75%	40%	20%	R550 + 17% of the amount over R12 500	R550	R1 862
4	R20 001–R30 000	95%	95%	55%	R1 862 + 27.5% of the amount over R20 000	R1 862	R4 612
5	More than R30 000	100%	100%	90%	As decided by CCMC	R4 612	

Annexure B

TARIFF OF FEES AND DISBURSEMENTS IN CRIMINAL MATTERS

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1	**Criminal trials – Appearance** [1]				
1.1(a)	For appearing before any court when a postponement is granted at the request of the State.	R234.00 Per postponement	R234.00 Per postponement	R234.00 Per postponement	Not applicable (N/A)
1.1(b)	A telephone attendance to postpone a matter but this is not allowed for a practitioner's first appearance for client. This is only permitted where client is not in custody and the matter has not been set down for trial.	R84.00	R84.00	R84.00	N/A

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1.1(c)	For appearing before the High Court (HC) where a matter has been set down for trial on a running roll and the matter is postponed at the request of the State to a date beyond the dates covered by the running roll on which the matter was initially set down (will only be paid once per matter and will not be paid in addition to a trial day fee). Where the matter is postponed to a date within the running roll period, then the postponement fee as per clause 1.1(a) will be payable, but only if the trial day fee or any portion of the trial day fee is not claimed.	N/A	N/A	R2 822.00	N/A

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1.2	For appearing before court and any other incidental professional services (excluding permitted preparation on any trial day). This includes appearing before a judicial officer in pre-trial conferences, identity parades and inspections conducted by the Court.	R1 513.00 Per trial day	R1 801.00 Per trial day	R2 822.00 Per trial day	N/A
1.3(a)	If the duration of a trial day does not total in aggregate to 4 hours, the trial day fee set out above shall be reduced pro rata. The minimum fee permitted in respect of any trial day shall be:	R234.00 Per day	R234.00 Per day	R234.00 Per day	N/A
1.3(b)	If a matter is finalised by means of a formal withdrawal (which must be in writing as opposed to matters which are merely struck off the roll), guilty plea, diversion or plea bargain, a finalisation fee, inclusive of all necessary consultations and preparations will be paid, irrespective of when such consultations or preparation took place. No	R1 513.00	R1 801.00	R2 822.00	N/A

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	additional preparation fees will be paid in respect of the trial. This will not preclude claims for postponements and court appearances before or after the date in respect of which the finalisation fee is claimed (e.g. for sentencing).				
2	**Preparation fees** [2]				
2.1	Practitioners may claim preparation and consultation fees from the date of instruction by Legal Aid South Africa. Preparation before the start of the trial is required (e.g. in the High Court up to 8 hours' preparation should routinely be done prior to the date of the commencement of the trial). Necessary travelling and accommodation disbursements (as per Paragraph 7 below) outside of the magisterial district in which the practitioner practises will be paid if required to execute	R211.00 Per hour	R296.00 Per hour	R374.00 Per hour	N/A

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	such preparation. In all matters actual preparation and necessary consultations prior to and during the trial shall be allowed and remunerated as follows: DC – Not more than 2 hours for the first accused and additional preparation and consultation time of not more than 1 hour per co-accused represented subject to a maximum of 8 hours per District Court matter. RC – Not more than 4 hours for the first accused and additional preparation and consultation time of not more than 2 hours per co-accused represented subject to a maximum of 16 hours per Regional Court matter. HC – A minimum of 8 hours for the first accused for the first week of trial or part thereof, and then an additional 8 hours per week or part thereof for the				

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	remaining period of the trial. Where the practitioner represents additional co-accused, then additional actual preparation and consultation time of not more than 4 hours per co-accused represented subject to a maximum of 32 hours per week will be allowed.				
2.2	In respect of trials where a practitioner for valid reasons requires additional preparation and consultation time beyond what is allowed in 2.1 above, a written motivation for increased preparation and consultation time must be submitted to the PE/NOE.	R211.00 Per hour	R296.00 Per hour	R374.00 Per hour	N/A
3	**Increased trial day fees [3]**				
3.1	Only in very exceptional circumstances will any increased fees be permitted. If increased trial day fees are authorised by the PE/NOE, these shall not exceed:	N/A	R3 914.00 Per trial day	R4 943.00 Per trial day	N/A

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
3.2	In very exceptional circumstances, the NOE may authorise the instruction of a second legal practitioner to assist the legal practitioner who appears at the trial at not more than 60% of the fees allowed to the first legal practitioner. In no circumstances will a third legal practitioner be permitted in respect of any accused or group of co-accused who are represented by a single legal team.	N/A	R 2 346.00 Per trial day (Maximum)	R2 956.00 Per trial day (Maximum)	N/A
4	**Bail applications and interlocutory applications** [4]				
4.1	A legal practitioner shall be remunerated for bail and other interlocutory applications not otherwise provided for at the rates set out herein as if such bail or interlocutory application formed part of the trial of the accused.	R1 513.00 Per trial day	R1 801.00 Per trial day	R2 822.00	N/A

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
5	**Criminal trials – General [5]**				
5.1	Application for a transcript of the evidence	R172.00 Per application	R172.00 Per application	R172.00 Per application	N/A
5.2(a)	Necessary perusal of a docket	R4.01 Per page	R4.01 Per page	R4.01 Per page	N/A
(b)	Necessary perusal of a record:	R4.01 Per page	R4.01 Per page	R4.01 Per page	
5.3	Preparation of heads of argument at the request of the court. Proof of the court's request must accompany the account. A folio consists of 100 words.	N/A	R20.94 Per folio	R29.76 Per folio	N/A
6	**Criminal appeals [6]**				
6.1	Written report on the merits of a matter when required by Justice Centre.	R466.00 Per report	R466.00 Per report	R466.00 Per report	R466.00 Per report
6.1(a)	For appearing before any trial court when a postponement is granted at the request of the State or at the instance of the presiding Judicial Officer before hearing an application for leave to appeal:	R234.00 Per postponement	R234.00 Per postponement	R234.00 Per postponement	N/A

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
6.2	Application to the court *a quo* for leave to appeal (where done by a practitioner who appeared at trial).	R511.00 Per application	R681.00 Per application	R819.00 Per application	N/A
6.3	Drafting petition for leave to appeal to the HC or application to the SCA including all typing and attendances relevant thereto.	N/A	N/A	R1 184.00 Per petition	R1 779.00 Per application
6.4	Drafting of documents not otherwise provided for, including all typing and relevant attendances.	N/A	N/A	R38.00 per page Up to a max of R739.00	R 57.00 per page Up to a max of R983.00
6.5	Application for a copy of a record under Rule 66(9) of the Magistrate's Court, Rule 49A of the Uniform Rules, Rule 52 of Uniform Rules including all typing and attendances relevant thereto.	R234.00 Per application	R234.00 Per application	R234.00 Per application	R234.00 Per application
6.6	Necessary perusal of any record for purposes of application for leave to appeal, provided the legal practitioner attending to the application for leave to appeal is not the legal practitioner who represented the accused on trial	R4.21 Per page	R4.21 Per page	R4.21 Per page	N/A

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	or where the client indicated that he/she did not require leave to appeal but subsequently requested an application for leave to appeal and a period of longer than 3 months has expired since sentence.				
6.7	Heads of argument including perusal of record to prepare heads of argument, all typing and relevant attendances	N/A	N/A	R2 456.00 Per set of Heads	R2 456.00 Per set of Heads
6.8	On appearing before the trial court to argue application for leave to appeal including the final report to Legal Aid SA and the report back to the legal aid applicant (where done by practitioner other than the practitioner who appeared at the trial). This fee includes any consultations, perusal, drafting or attendance on that day and any other application made on that day.	R1 107.00	R1 448.00	R1 637.00	N/A
6.9	On appearing before a superior court to argue appeal	N/A	N/A	R2 456.00	R5 732.00

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	and including the noting of judgement, the final report to Legal Aid SA and the report back to the legal aid applicant. This fee includes any consultations or perusal on that day and any application made on that day.				
6.10	Any necessary consultation with an accused or a witness whose evidence is yet to be led. Not more than one consultation per accused or per witness.	R339.00 Per consultation	R339.00 Per consultation	R339.00 Per consultation	R339.00 Per consultation
7	**Agency Agreement Global Fees**				
7.1	All inclusive global fee per finalised matter shall be paid as follows:	R1 710.00	R4 038.00		
8	**Disbursements** [8]				
	These disbursements shall be allowed over and above the fees set out above.				

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
8.1	The fees of any expert authorised by Legal Aid SA.	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised
8.2	Necessary revenue stamps	As required by the prosecution	As required by the prosecution	As required by the prosecution	As required by the prosecution
8.2(a)	Necessary copies of documents such as charge sheets, petitions and heads of argument.	R2.41 Per page	R2.41 Per page	R2.41 Per page	R2.41 Per page
8.3	Necessary travel	R4.10 Per km	R4.10 Per km	R4.10 Per km	R4.10 Per km
8.4	Necessary air travel	N/A	N/A	Economy class	Economy class
8.5	Necessary accommodation allowance	R950.00 Per night (allowed as per Treasury Instruction note 1 of 2014)	R950.00 Per night (allowed as per Treasury Instruction note 1 of 2014)	R950.00 Per night (allowed as per Treasury Instruction note 1 of 2014)	R950.00 Per night (allowed as per Treasury Instruction note 1 of 2014)
8.6	Necessary subsistence allowance	R219.30 Maximum to be claimed as allowed per Treasury Instruction note 1 of 2014) inclusive of VAT	R219.30 Maximum to be claimed as allowed per Treasury Instruction note 1 of 2014) inclusive of VAT	R219.30 Maximum to be claimed as allowed per Treasury Instruction note 1 of 2014) inclusive of VAT	R219.30 Maximum as allowed per Treasury Instruction note 1 of 2014) inclusive of VAT
8.7	Toll roads to the extent that these were reasonably	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	necessary				

CRIMINAL TARIFFS: NOTES

1. Criminal Trials – Appearance fees

1.1. No additional fees will be permitted in respect of any trial day lasting in excess of 4 hours or for any waiting time or any other attendance whatsoever.

1.2. A trial day means a day on which evidence is led and/or the court hears argument pursuant to the hearing or submission of evidence and/or hands down judgement after the hearing of evidence for an aggregate time of not less than 4 hours. Where a trial is less than 4 hours' duration the trial day fee is reduced pro rata.

2. Preparation fees

2.1. In all trials where the legal practitioner requires consultation/preparation fees beyond what is stipulated in clause 2.1 of the tariffs, the legal practitioner must submit a detailed written motivation to the PE/NOE responsible detailing the preparation required, including preparation per co-accused, perusal of documents, necessary consultations and the anticipated duration of these.

2.2. PEs must consult their delegations to determine what preparation fees they may authorise and which must be referred to the NOE.

3. Increased trial day fees

3.1. In no circumstances will a third legal practitioner be permitted for any accused or group of co-accused who are represented by a single legal team.

3.2. PEs must consult their delegations to determine what increased trial day fees they may authorise and which must be referred to the NOE.

3.3. The NOE shall ensure that at each ordinary meeting of the Board particulars of any increased fees authorised and particulars of any increased fees paid since its last such report are tabled for the information of members of the Board.

4. Bail applications

4.1. Not more than one bail application shall be conducted on a legal aid basis under any one case number without the prior written consent of the applicable HoO, which should only be granted in response to a detailed motivation in writing for any second or subsequent bail application.

4.2. Upon accounting to Legal Aid SA the legal practitioner shall indicate whether a bail application was launched and shall report on the result of this bail application.

4.3. If an accused on legal aid is granted bail in excess of R6, 743.10 and the bail is paid by the accused (irrespective of whose name appears on the bail receipt), the legal practitioner acting on behalf of the accused shall immediately report this fact in writing to the applicable HoO. The applicable HoO shall give directions as to whether the matter is to be:

4.3.1. Continued on legal aid; or

4.3.2. Referred back for reconsideration of whether the accused qualifies for legal aid; or

4.3.3. No longer conducted on a legal aid basis.

4.4. Bail appeals, like other appeals, will be dealt with by separate legal aid instructions and subject to the tariffs set out for Criminal Appeals.

4.5. Bail appeals will be remunerated at the tariff applicable to criminal appeals generally.

5. Criminal trials - General

5.1. The fees set out above are all inclusive fees and no additional fees will be permitted.

5.2. A legal practitioner submitting an account to Legal Aid SA may be required to attach to the account a certificate by the presiding judicial officer or his/her registrar (if any) verifying the appearances and times set out in the legal practitioner's account. This certificate is currently required for all criminal trials in the High Court but is not currently required for criminal trials in the magistrate's courts. For criminal trials in the magistrate's courts in which a fee is claimed for any appearance on or after 1 September 2003 the legal practitioner claiming these fees must submit a copy of the charge sheet and its annexures to Legal Aid SA with his/her account.

5.3. A legal practitioner who is appointed on a legal aid basis to represent an accused at a criminal trial after the accused has pleaded and after evidence has been led and if the legal practitioner was not present when such evidence was led, is entitled to apply to the trial court for the provision to the legal practitioner at the expense of the Department of Justice a copy of the transcript of the evidence led in his/her absence, and if this application is granted, to peruse the transcript. Except in the above circumstances, the perusal of a record, other than as part of the Preparation Fees allowed under Item 2 of the above tariff, shall only be allowed with the prior written consent of the PE/NOE.

5.4. Where in excess of 2 hours' preparation is permitted for any criminal trial, this preparation time shall include all necessary perusal of documents and no separate fee per page shall be paid for the perusal of any document.

6. Criminal appeals

6.1. The fees set out in Items 6.7, 6.8 and 6.9 shall be increased by 25% for each additional accused being represented to a maximum of an additional 150% for all accused.

6.2. Applications for bail pending appeal will be remunerated in accordance with the tariff applicable to bail applications for awaiting trial accused. Applications for bail pending appeal are not permitted on a legal aid basis if the accused was in custody before conviction.

6.3. The PEs have a general discretion to agree special and/or increased fees in circumstances which justify deviation from the above tariff. Any request for increased fees must be fully motivated and must be submitted to the HoO in writing.

7. Disbursements

7.1 Except as set out above no legal practitioner shall be entitled to recover any allowance or disbursement in respect of travel, accommodation, subsistence or any other incidental expenses from Legal Aid SA.

7.2 Except in the case of economy class air fares and toll roads (where vouchers must be produced and where the legal practitioner is reimbursed according to actual out of pocket expenditure) the allowances set out above are payable irrespective of the actual expenditure (either greater or lesser) incurred by the legal practitioner.

7.3 Legal Aid SA may, but is not obliged to, itself book and pay for air travel and/or accommodation and/or meals. In the event of Legal Aid SA booking and paying for meals and/or accommodation the allowances for accommodation and/or subsistence, as the case may be, will not be paid.

7.4 Except as set out above, no other disbursements, including, but not by way of limitation, counsel's fees and correspondent's fees, shall be paid to any legal practitioner without the prior written consent of the HoO or any admitted legal practitioner in the employ of Legal Aid SA delegated by the HoO to make this decision on his/her behalf.

8. General

8.1 After the case has been finalised, the legal practitioner must report to the applicable HoO in writing setting out:

8.1.1.1 The case number

8.1.1.2 The court where the matter was heard

8.1.1.3 The outcome of the matter

8.1.1.4 The duration of the hearing

8.1.1.5 Any other material information

8.2 All sums referred to are amounts exclusive of VAT.

8.3 Under no circumstances will any collapse/reservation/cancellation/waiting/travelling fees be paid by Legal Aid SA to any legal practitioner for any criminal matters, criminal appeals or any other matters whatsoever. Legal Aid SA will pay legal practitioners in accordance with its tariffs strictly according to services rendered and to the extent that the applicable tariff makes provision for the service rendered.

8.4 It shall be the responsibility of the legal practitioner upon submitting his/her account to ensure that Legal Aid SA is placed in possession of all documentation that will enable it to pay the legal practitioner's account. Provided this requirement is fully and properly complied with, Legal Aid SA will dispatch a cheque in payment of this account within 30 days of receipt thereof or, will instruct its bankers to effect payment by electronic transfer or, in the event of Legal Aid SA being unable or unwilling to effect payment, advise the legal practitioner in writing of the reason for non-payment.

8.5 The PE/NOE has a general discretion to approve a fee that is not otherwise provided for in this tariff where it is deemed necessary to protect the interest of a client, but not beyond the rates for similar type work prescribed in this tariff.

Annexure C

TARIFF OF FEES AND DISBURSEMENTS IN CIVIL MATTERS[1]

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
1	**Judicare remuneration for services according to levels [2] + [3]**					
1.1(a)	Hourly rates					
	Level 1	R362.00	N/A	N/A	N/A	N/A
	Level 2	R426.00	N/A	N/A	N/A	N/A
	Level 3	R510.00	R542.00	R572.00	N/A	N/A
	Level 4	R638.00	R667.00	R697.00	N/A	N/A
	Level 5	N/A	N/A	R819.00	N/A	N/A
1.2	Rates per completed 4-hour trial day					
	Level 1	R1 511.00	N/A	N/A	N/A	N/A
	Level 2	R1 820.00	N/A	N/A	N/A	N/A
	Level 3	R2 125.00	R2 489.00	R2 865.00	N/A	N/A
	Level 4	R2 555.00	R3 118.00	R3 681.00	N/A	N/A
	Level 5	N/A	N/A	R4 911.00	N/A	N/A
1.3(a)	Instruction to sue/or defend or to counter claim or defend counter-claim, including perusal of all documentation and all necessary consultations to issue summons					
	Level 1	R305.00				
	Level 2	R408.00	N/A	N/A	N/A	N/A

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
	Level 3 Level 4 Level 5	R490.00 R612.00 N/A	N/A R532.00 R645.00 N/A	N/A R572.00 R696.00 R819.00	N/A N/A N/A N/A	N/A N/A N/A N/A
1.3(b)	Fees for necessary correspondence written per folio and received per letter Level 1 Level 2 Level 3 Level 4 Level 5	 R17.64 R18.74 R19.84 R20.94 N/A	 N/A N/A R25.35 R30.87 N/A	 N/A N/A R30.87 R41.89 R56.27	 N/A N/A N/A N/A N/A	 N/A N/A N/A N/A N/A
1.4	Where a matter is postponed without evidence being led or argument being heard on the substantive matter or judgement being handed down after the hearing or submission of evidence, a fee shall be allowed for appearing before court when the postponement is granted of:	R234.00 Per postponement	R234.00 Per postponement	R 234.00 Per postponement	N/A	N/A
1.5	**Merit reports** In any matter where a practitioner is required to prepare a merit report, the practitioner shall be remunerated at the rate as stipulated in Item 1.1 above that corresponds to the level of the matter, subject to a					

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
	maximum of 3 hours.					
	See also Note 4 on the General Provisos applicable to all civil matters not classified as Impact Services.					
2	**Impact Services** [5]					
	Legal practitioners who perform impact services on the instruction of Legal Aid SA will be entitled to be remunerated as follows:					
2.1	To be negotiated and agreed in each instance but never more than:					
2.1.1	Attorneys	N/A	N/A	Not more than double the amount that would be allowed by a taxing master as between attorney and client on the applicable statutory tariff if the work had been performed		

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
				by an attorney		
2.1.2	Junior Counsel	N/A	N/A	Not more than two thirds of the rates paid to Senior Counsel		
2.1.3	Hourly rate for Senior Counsel and specialist attorneys	N/A	N/A	R1 523.00 to R2 282.00 Per hour	R1 523.00 to R2 282.00 Per hour	R1 523.00 to R2 282.00 Per hour
2.1.4	Senior Counsel and specialist attorneys per 10-hour day	N/A	N/A	R15 223.00 to R22 817.00 Per day	R15 223.00 to R22 817.00 Per day	R15 223.00 to R22 817.00 Per day
3	**Disbursements [6]**					
3.1	**These disbursements shall be allowed over and above the fees set out above.**					
3.2	The fees of any expert authorised by Legal Aid SA	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised
3.3	Necessary revenue stamps	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs
3.4	Necessary sheriff's fees or like process (edictal citation). Necessary advertisement costs pursuant to the grant of a substituted service order.	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
3.5	Necessary travel	R4.10 Per km	R4.10 Per km	R4.10 Per km	R4.10 Per km	R4.10 Per km
3.6	Necessary air travel	N/A	N/A	N/A	Economy class	Economy class
3.7	Necessary allowance for accommodation		R950.00 Maximum to be claimed as allowed as per Treasury Instruction note 1 of 2014			
3.8	Necessary subsistence allowance		R219.30 Maximum to be claimed as allowed as per Treasury Instruction note 1 of 2014 inclusive of VAT			
3.9	Toll road fees to the extent that these were reasonably necessary		Actual out of pocket expenses			
See also Note 7						

CIVIL TARIFFS: NOTES

1. Applicable Tariff

1.1. Legal practitioners shall be remunerated in accordance with this annexure.

2. Experience levels of Legal Practitioners

2.1. At the commencement of each calendar year or as soon thereafter as practical each Legal Practitioner shall be classified as being of a level from 1 to 5 in accordance with these criteria:

2.2. Required experience per level

Level	Minimum Required Experience
1	Entry level (for reserved work must be legally permitted to undertake the work)
2	Minimum 1 year full-time general practice as a Legal Practitioner
3	Minimum 3 years full-time general practice as a Legal Practitioner
4	Minimum 5 years full-time general practice as a Legal Practitioner and must be permitted to appear before the High Court if High Court work is to be undertaken
5	Minimum ten years full time general practice as a Legal Practitioner and must be permitted to appear before the High Court if High Court work is to be undertaken

2.3. The calculation of time spent by a Legal Practitioner in full-time practice shall take into account:

2.3.1. A period not exceeding 2 years as a candidate attorney provided the Legal Practitioner was subsequently admitted as an attorney; and

2.3.2. A period not exceeding 1 year as a pupil provided the legal practitioner subsequently became a member of the bar of which his/her master was a member; and

2.3.3. Any period during which the legal practitioner was engaged full-time in legal practice in the Republic of South Africa as an attorney or as an advocate:

2.3.3.1. For his/her own account; and/or

2.3.3.2. In partnership with other practising legal practitioners; and/or

2.3.3.3. As a director of a company in which all directors and shareholders were practising legal practitioners; and/or

2.3.3.4. As an attorney employed by a person, partnership or company described in 2.3.3.1, 2.3.3.2 or 2.3.3.3

2.3.3.5. In the employ of the Legal Aid SA; and/or

2.3.3.6. In the employ of the State Attorney; and/or

2.3.3.7. As a legal advisor doing non-litigious work and after admission as a legal practitioner.

2.4. Before any legal aid instruction is allocated to any legal practitioner a Principal Legal Practitioner or High Court Unit Manager in the employ of Legal Aid SA shall classify the legal services required from level 1 to level 5 in accordance with paragraph 3 below.

2.5. No legal practitioner shall be permitted to provide any legal services requiring a higher level of experience than that legal practitioner had as at first of January in the year in which the legal aid instruction was allocated to him/her.

2.6. A legal practitioner may render legal services at a level below the maximum for which he/she is classified, subject thereto that such legal services shall be remunerated at the level at which the legal aid instruction is classified.

2.7. Where a legal practitioner in the employ of the Legal Aid SA is required to make a decision as to whether the level of complexity of any matter is such as to justify its classification at Level 5, he/she:

2.7.1. Shall be entitled but not obliged to require the legal practitioner to demonstrate that he/she has the requisite level of expertise in addition to the minimum required experience set out in respect of Level 5.

2.7.2. Shall be entitled but not obliged to refuse to permit the legal practitioner concerned to perform any legal services classified as “complex” in the event of failure to comply with 2.7.1 above.

2.8. Any reference to the High Court includes the Admiralty Court, the Land Claims Court, the Water Court, the Income Tax Court, the Labour Court and the Labour Appeal Court.

3. Matter Classification

Level	Permitted Professional Services
1	a. Matters which if conducted without legal aid would fall within Scale A Magistrates’ Court b. CCMA – where permitted by Commissioner and permitted by Regulations c. Maintenance matters – where permitted by the Regulations d. Mediation and conciliation matters e. Paralegal work f. Domestic violence matters – where permitted by the Regulations g. Appearances before a Refugee Status Determination Officer at a hearing in terms of Section 24 of the Refugees Act No. 130 of 1998. h. Any civil or non-litigious matter not otherwise provided for

Level 2	a. Matters which if conducted without legal aid would fall within Scale B Magistrates' Courts. b. Labour arbitrations whether before CCMA or otherwise, where permitted by Commissioner and the Regulations c. Appearances before a Standing Committee in respect of a Review in terms of Section 25 of the Refugees Act
Level 3	a. Matters which if conducted without legal aid would fall within Scale C Magistrates' Court b. Children's court matters. c. Children's Act matters. d. Divorce, custody, guardianship and Regional Court matters not otherwise provided for e. General arbitrations and ADR not otherwise provided for f. Appearances before an Appeals Board in respect of an Appeal in terms of Section 26 of the Refugees Act
Level 4	a. Civil matters falling within the exclusive jurisdiction of the High Court b. Civil matters in the Magistrates' Courts in which jurisdiction would not have vested in any magistrate but for the consent of the parties to the jurisdiction of the Magistrates' Court c. Non litigious services customarily performed by an admitted attorney and as permitted by the Legal Aid Regulations d. Labour Court matters e. Civil matters sounding in money in the Regional Court
Level 5	a. Civil appeals and reviews before any Provincial or Local Division of the High court b. Complex High Court civil matters classified as such (pursuant to detailed written representations) by an authorised legal practitioner in the employ of Legal Aid SA who himself/herself has the required experience in respect of this level. c. Complex non litigious services classified as such (pursuant to detailed written representations) by a legal practitioner in the employ of Legal Aid SA at executive level, customarily performed by a specialist attorney and as permitted by the Regulations

4. General Provisos

4.1. A trial day means a day on which evidence is led and/or the court hears argument after the hearing or submission of evidence and/or hands down judgement after the hearing of evidence for an aggregate time of not less than 4 hours. Where a trial day is of less than 4 hours duration the trial day fee is reduced pro rata.

4.2. Except with the consent of the PE/CLE a practitioner shall not be entitled to claim:

4.2.1. More than 10 hours remunerated consultation, preparation and other pre-trial chamber work after litis contestatio for each anticipated trial day in a civil trial or civil matter, which is referred to evidence.

4.2.2. However, in respect of default judgements, settled or undefended matters and interlocutory applications the remunerated consultation, preparation and other pre-trial chamber work shall ordinarily be limited to not more than 2 hours.

4.3. In addition to the above, the HoO or Legal Practitioner who approves a legal aid instruction to which the tariff set out above applies may approve the maximum amount payable by the Legal Aid SA in terms of the judicare instruction.

4.4. Drafting documents

4.4.1. Where the drafting of any pleadings, affidavits (of a non-formal nature and excluding annexures) or heads of argument are required in any matter, it is expected of the Legal Practitioner concerned to draft at a rate of 100 words per 15 minutes.

4.4.2. Where the drafting of any other document is required, it is expected of the Legal Practitioner concerned to draft at a rate of 150 words per 15 minutes.

4.4.3. The rates set out in paragraphs 4.4.1 and 4.4.2 may be varied by the PE/CLE only.

4.4.4. A Legal Practitioner who alleges that a specified period of time was spent in the drafting of any documents shall be presumed to have thereby vouched to Legal Aid SA that the rates set out in paragraphs 4.4.1 and 4.4.2 above were achieved unless he/she clearly, simultaneously and in writing advises Legal Aid SA to the contrary.

4.5. Perusal of documents

4.5.1. Where the perusal of any pleadings, affidavits (of a non-formal nature and excluding annexures) or heads of argument are required in any matter it is expected of the Legal Practitioner to peruse at a rate of 7 pages per 15 minutes.

4.5.2. Where the perusal of any other document, including but not by way of limitation, a record is required it is expected of the Legal Practitioner to peruse at a rate of 10 pages per 15 minutes.

4.5.3. The rates set out in paragraphs 4.5.1. and 4.5.2 may be varied by the PE/CLE only.

4.5.4. A Legal Practitioner who alleges that a specified period of time was spent in the perusal of any documents shall be presumed to have thereby vouched to Legal Aid SA that the rates set out in paragraphs 4.5.1 and 4.5.2 above were achieved unless he/she clearly, simultaneously and in writing advises Legal Aid SA to the contrary.

4.6. Where it is necessary to appoint a correspondent, a Legal Practitioner acting on a legal aid instruction shall, if there is an office of Legal Aid SA in the magisterial district concerned, offer the work, in the first instance, to the office of Legal Aid SA. In the case of any other correspondent the Judicare Legal Practitioner is required, in advance and in writing, to make it clear to the correspondent concerned:

4.6.1. That the Legal Practitioner, and consequently the correspondent, act on a legal aid instruction and are entitled to be remunerated by Legal Aid SA alone and on Legal Aid SA tariffs;

4.6.2. That the correspondent will be contracting with the attorney and not with Legal Aid SA and will have no claim against Legal Aid SA directly.

4.7. A Legal Practitioner who accepts a legal aid instruction is ordinarily expected to render the necessary legal services himself/herself. An attorney may, with the consent of the PE, elect to instruct an advocate in a matter in the High Court, subject to the condition that if Legal Aid SA has a High Court Unit in the magisterial district in which the seat of the court is located, the work shall, in the first instance be offered, to the said High Court Unit. In the event of the work being declined by the High Court Unit and thereafter being offered to any advocate in private practice the attorney is required to make it clear to the advocate concerned:

4.7.1. That the attorney and consequently the advocate act on a legal aid instruction and are entitled to be remunerated by Legal Aid SA alone and on Legal Aid SA tariffs;

4.7.2. That the advocate will be contracting with the attorney and not with Legal Aid SA and will have no claim against Legal Aid SA directly;

4.7.3. That Legal Aid SA will not pay either Legal Practitioner for any work that would have been unnecessary had the attorney elected to do all the work himself/herself and will not pay for any duplication of work;

4.7.4. That except with the express written consent of the PE , the attorney client costs payable by Legal Aid SA pursuant to the employment of an advocate shall not exceed the attorney client costs that would have been payable by Legal Aid SA if all the professional services had been rendered by the attorney instructed by the Legal Aid SA.

4.8. No Senior or Junior Counsel may be instructed without the express written consent of the PE or a Legal Practitioner employed by Legal Aid SA.

4.9. After the case has been finalised the legal practitioner must report to the HoO in writing setting out:

4.9.1. The case number

4.9.2. The court where the matter was heard

4.9.3. The outcome of the matter

4.9.4. The duration of the hearing

4.9.5. Any other material information

4.10. In any civil matter a Legal Practitioner shall account to Legal Aid SA by way of detailed itemised account setting out, the date, the work performed, the time taken (with reference to a 24 hour clock), the number of pages drafted or perused and the fees claimed.

4.11. No additional fees or disbursements are payable at levels 1 to 5 to any Legal Practitioner for any matter not provided for by this tariff and not agreed to in writing by the PE/CLE. Thus, for example, the Legal Practitioner who draws a plea is entitled to be remunerated for his/her time spent drawing the document. This is an all-inclusive fee and Legal Aid SA may not

separately be invoiced for tying, copying, delivery, filing and similar non-professional services customarily rendered by the subordinate staff of the Legal Practitioner.

4.12. A Legal Practitioner shall retain his/her complete case file in respect of legal services rendered in any civil or non-litigious matter for at least 7 years after the finalisation of the mandate of the legal Practitioner.

4.13. Where a rate is permitted per hour and the performance of a task requires a portion of an hour the amount to be paid shall be calculated pro rata.

4.14. In any civil matter, prior to litis contestatio or in any non-litigious matter, a Legal Practitioner at Levels 1 to 5 shall not, without the consent of the PE/CLE, be entitled to be remunerated for in excess of 10 hours work over and above any necessary drawing and perusals. In any undefended civil matter or civil matter, which is or could reasonably have been settled prior to litis contestation, this shall be reduced to four hours.

4.15. In the application of this tariff, a page shall consist of 300 words.

5. Impact Services

5.1. Impact Services shall include Constitutional Court maters, civil appeals before the Supreme Court of Appeal, matters classified as impact litigation by Legal Aid SA and non-litigious impact services classified as such by Legal Aid SA.

5.2. All representations in relation to the classification of any matter as an Impact Services Matter and all other correspondence ancillary thereto must be addressed to the Impact Litigation Unit at the National Office of Legal Aid SA.

6. Disbursements

6.1 Except as set out above no legal practitioner shall be entitled to recover any allowance or disbursement in respect of travel, accommodation, subsistence or any other incidental expenses from Legal Aid SA.

6.2 Except in the case of economy class air fares and toll roads (where vouchers must be produced and where the legal practitioner is reimbursed according to actual out of pocket expenditure) the allowances set out above are payable irrespective of the actual expenditure (either greater or lesser) incurred by the legal practitioner.

6.3 Legal Aid SA may, but is not obliged to, itself book and pay for air travel and/or accommodation and/or meals. In the event of Legal Aid SA booking and paying for meals and/or accommodation the allowances in respect of accommodation and/or subsistence, as the case may be, will not be paid.

6.4 Except as set out above, no other disbursements, including, but not by way of limitation, counsel's fees and correspondent's fees shall be paid to any legal practitioner without the prior written consent of the PE/CLE.

7. General

7.1 All sums referred to are amounts exclusive of VAT.

7.2 Under no circumstances will Legal Aid SA pay any collapse/reservation/cancellation/waiting/travelling fees to any legal practitioner for any matters whatsoever. Legal Aid SA will pay legal practitioners in accordance with its tariffs strictly according to services rendered and to the extent that the applicable tariff makes provision for the service rendered.

7.3 It shall be the responsibility of the legal practitioner upon submitting his/her account to ensure that Legal Aid SA is placed in possession of all documentation that will enable it to pay the legal practitioner's account. Provided this requirement is fully and properly complied with, Legal Aid SA will dispatch a cheque in payment of this account within 30 days of receipt thereof or, by electronic transfer, will instruct its bankers to effect payment, or, in the event of the Legal Aid SA being unable to unwilling to effect payment, advise the legal practitioner in writing of the reason for non-payment.

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