



Legal Aid
South Africa

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LEGAL AID MANUAL
VERSION 7

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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 Paralegals, Candidate Attorneys and Legal Practitioners working in Legal Aid South Africa offices, Magistrate's Court Offices and local offices.
- 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, and
- Acronyms that we use in this *Legal Aid Manual*.

BAC	Bid Adjudication Committee
BEE	Black Economic Empowerment
B-BBEE	Broad-Based Black Economic Empowerment
B-BBE Group	Broad-Based Black Economic Group
CCMC	Constitutional Case Management Committee
CEO	Chief Executive Officer
CLE	Chief Legal Executive
CPI	Consumer Price Index
District Court	District Magistrate's Court
DPP	Director of Public Prosecutions
eLAA	electronic Legal Aid Administration system
EME	Exempt Micro Enterprises
HC	High Court
HCUM	High Court Unit Manager
HIV	Human Immunodeficiency Virus
HoO	Head of Office
IAE	Internal Audit Executive
Local office/LO	Legal Aid SA local office
LPC	Legal Practice Council
LSTC	Legal Services Technical Committee
NGO	Non-Governmental Organisation
NOE	National Operations Executive
PE	Provincial Executive
PO	Provincial Office
POPI Act	Protection of Personal Information Act
PPPFA	Preferential Procurement Policy Framework Act
QSE	Qualifying Small Enterprises
Regional Court	Magistrate's Court for a Regional Division
SANAS	South African National Accreditation System
SARS	South African Revenue Service
SCM	Supply Chain Management
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
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 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.

Appellant

A person noting an appeal to a higher court and who 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, et cetera.

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 HoO'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.

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.

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 Aid SA local office

Legal Aid South Africa offices which administer and provide legal aid in many parts of South Africa.

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, Local Office 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. Paralegals, Candidate Attorneys and Legal Practitioners in Magistrate's Court Offices and local offices.

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 South Africa.

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.

Strategic litigation 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.

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 their 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 SA

All Legal Aid SA offices will be governed by:

- (i) The *Legal Aid South Africa Act 39 of 2014* (the Act);
- (ii) The *Regulations to the Act*;
- (iii) The provisions of this Manual;
- (iv) Legal Aid SA policies and Standard Operating Procedures, as amended from time to time;
- (v) The decisions of the Board of Legal Aid SA;
- (vi) Delegation of authority by the Board of Legal Aid SA;
- (vii) Section 16(2) delegation of authority by the CEO of Legal Aid SA.

1.4 Copies of the Legal Aid Manual

The Manual is available electronically on Legal Aid SA's website and at all offices of Legal Aid SA. The Manual can be found at this link: <https://legal-aid.co.za/legal-aid-manual-and-regulations/>

Chapter 2: The Mixed Delivery System for legal aid

2.1 Legal Aid SA mixed delivery systems

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

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.

2.1.1 Local Office Model

Legal Aid SA mostly provides legal services by Paralegals and Legal Practitioners employed at its local offices and satellite offices.

In criminal matters one of the models for legal service delivery involves the stationing of Legal Practitioners at 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 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, Legal Aid SA has its own Code of Professional Conduct for Legal Practitioners in its employ.

Each local office will have capacity to deliver civil legal advice and civil legal aid services, either through Civil Sections or Civil Units. At satellite offices, general advice services are rendered by Paralegals.

The Chief Legal Executive (CLE) may designate one or more Civil Clusters in each province, comprising a number of Local Office Civil Sections and/or Units. The area of a Civil Section or Unit will consist of various Magisterial Districts.

2.1.2 Judicare

Judicare is utilised to supplement Legal Aid SA's capacity as part of its mixed delivery model.

Judicare may also be issued under the following circumstances:

- (i) In matters where there is a conflict of interest between legal aid applicants in the matter;

- (ii) In matters where the legal aid applicant is in conflict with the Legal Practitioner appointed in the matter;
- (iii) In matters where specialist knowledge is required that is not available at the local office;
- (iv) In matters where the local office lacks the capacity to adequately represent the legal aid applicant;
- (v) In matters where the number of accused persons requiring legal aid warrants the appointment of separate Legal Practitioners.

2.1.3 Co-operation Agreements

In addition to direct service delivery through its local offices 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 a designated court. 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 Strategic Litigation Services

Strategic litigation services are rendered to assist in making the Constitution a living reality, particularly for vulnerable and marginalised segments of our population. It provides the opportunity for Legal Aid SA to undertake and fund litigation or other legal work that can have a significant impact on a group or segment of a group of people. The impact of the work undertaken and funded as strategic litigation services has the potential to have a far greater reach than for one individual client.

These strategic litigation services could be rendered by:

- (i) Legal practitioners employed at Legal Aid SA's offices, or
- (ii) Legal practitioners in private practice, or
- (iii) A Co-operation Partner of Legal Aid SA, or

- (iv) Legal NGOs, or
- (v) A Law Clinic, or
- (vi) Any combination of the above.

Strategic 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.

Strategic 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, including proposals that address the socio-economic rights of indigent and vulnerable persons and/or communities.

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 at courts. Applicants in criminal matters may apply for legal aid at any of our offices or through an employee of Legal Aid SA. Applications for legal aid may be made for legal representation in both civil and criminal matters.

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. However, where the applicant declares any employment, income and/or assets, then a detailed means test must be completed.

If the applicant is employed, such applicant must complete a detailed means test form to determine whether they qualify for legal aid.

If the applicant exceeds the means test, as well as the HoO and PE discretion, such applicant must complete a statement detailing their assets, income and expenditure and liabilities so that an assessment can be made as to whether they can afford the cost of legal representation in their matter.

If legal aid is refused in either a civil or criminal matter, the person receiving the legal aid application must have the legal aid applicant sign a **Refusal of Legal Aid form** and a copy of this signed form must be filed by the local office.

A legal aid applicant aggrieved by the refusal of legal aid, 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 HoO or a person delegated by the HoO, when receiving the documents of a legal aid applicant, must satisfy themselves 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 a Legal Practitioner or Candidate Attorney employed at Legal Aid SA, then 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 **Legal Aid Application form** does not need to be completed. A Paralegal records such a request on the Legal Aid SA electronic administration (eLAA) system.

(d) Legal aid application by a child

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

- (i) The child or an adult acting on behalf of the child may apply for legal aid.
- (ii) If there is a court order requiring legal aid to be provided, then the **Legal Aid Application form** does not have to be signed.
- (iii) 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 HoO should assist in obtaining the necessary information to complete the **Legal Aid Application form** on behalf of the child. The HoO must then sign the application, certifying that they completed the **Legal Aid Application form** on behalf of the child.

3.2 Obligation of Presiding Officers in respect of legal aid applications

- (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 Presiding Officer that they are not on legal aid and require legal representation, then the Presiding Officer should refer the accused to the local office representative to complete an application for legal aid.
- (c) If the accused is not in detention, the Presiding Officer should direct the accused to a Legal Aid SA employee or the local office to make their application for legal aid.
- (d) If the accused is in detention, the Presiding Officer 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 local office that receives an application for legal aid that relates to a matter that does not fall within its coverage area must refer the application to the local office that has jurisdiction.

(b) Verifying details

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

(c) Proof of income

Legal Aid SA may request proof of income as well as any other supporting documentation relevant to the applicant's financial position.

Examples of proof of income include:

- (i) An official salary voucher;
- (ii) A letter of confirmation from employer;
- (iii) A statement of income and expenditure;
- (iv) Any relevant tax assessment or bank statement;
- (v) Certificates of investments;
- (vi) Documentary evidence on all issues reflected in the forms.

(d) General processing guidelines

- (i) 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.
- (ii) Legal aid application forms must be completed for every application even if legal aid is likely to be refused.
- (iii) A **Legal Aid Application form** need not be completed where the applicant is assisted with advice only.
- (iv) A separate application must be completed for each individual applicant.
- (v) Where more than one person applies for legal aid in any one matter, the applications for co-applicants must be linked on the eLAA system to the same matter reference number according to Legal Aid SA software system procedures.

3.4 Procedure to evaluate legal aid applications

The authorised Legal Aid SA official must firstly determine whether the matter qualifies for legal aid in terms of our policy.

If the matter qualifies for legal aid, then the official must determine if the applicant qualifies in terms of the means test as per Regulation 27, 28 and 30.

Where the applicant does not qualify because of the means test but is unlikely to afford to fund their litigation then the statement of financial position should be provided and the application referred to the NOE/CLE depending on whether it is criminal or civil.

The NOE/CLE may make a determination including possible partially subsidised legal aid in terms of Regulation 31 and 32.

(a) Consequence of court order

If a court order has been issued for legal aid to be granted in a matter in terms of section 22 of the *Legal Aid SA Act*, the HoO has no further discretion in the case and must issue a legal aid instruction, unless reviewed or appealed 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 HoO who receives a court order granting legal representation either by Legal Aid SA or at state expense, must:

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

(c) Report by HoO

Where Legal Aid SA must file a report under section 22 of the Act, the HoO of the local office 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 Provincial Executive

An applicant has the right of appeal to the PE against the refusal of a HoO to grant legal aid. The HoO shall inform the applicant of this right as well as the reasons for the refusal of legal aid.

The grounds of appeal must be submitted to the HoO in writing. The HoO must forward these to the PE together with the application documents and their 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 PE to grant legal aid. The PE shall inform the applicant of this right as well as the reasons for the refusal of legal aid.

The grounds of appeal must be submitted to the PE in writing. The PE must forward these to the NOE or CLE together with the application documents and their 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:

- (i) Apply for judicial relief – for example, a review of the NOE or CLE's decision.
- (ii) Approach the Presiding 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 refusal of legal aid to the applicant.

3.6 Safekeeping and handling of documents

(a) HoOs handling of documents

HoOs must ensure that the signed ***Legal Aid Application form*** is filed in the matter file of the local office.

(b) Full and clear completion of legal aid forms

Legal aid application forms must be completed in full and in a clearly legible manner.

(c) Assisting applicants

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

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

3.7 Co-ordinating, evaluating and processing 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 HoO must consult with the relevant PE, as well as the Corporate Legal Section of Legal Aid SA.

The HoO, or a person nominated by the HoO, must make themselves available to appear in court to deal with the section 22 report.

(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:

- (i) A legal aid applicant who is obliged to make a contribution must be advised in writing in accordance with the ***Contribution Payable by an Accused form***. The signature of the applicant must be obtained on the form before any legal aid instruction is authorised. A copy of the signed form must be kept in the case file that is maintained by the legal practitioner and provided to the applicant.
- (ii) At the first appearance after the authorisation of legal aid, the legal practitioner must place it on record that legal aid has been authorised subject to the payment of monthly contributions by the client in accordance with *Legal Aid Regulation 32*.
- (iii) 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 HoO or their representative must request the Presiding Officer (where applicable) that legal aid has been authorised subject to the payment of a contribution and that failure by the client to pay the monthly contribution may result in the termination of legal aid. Legal Aid SA's section 22 report to the Presiding Officer should include a request that they should consider ordering the client to make a contribution in accordance with *Legal Aid Regulations 31 and 32* (read with the Legal Aid SA Contribution Table in the *Legal Aid Manual*).
- (iv) Contributions are payable monthly in advance by no later than the seventh day of the month following the month that legal aid has been granted, until the maximum amount of the contribution has been paid, or the other conditions in *Legal Aid Regulation 32* are met.
- (v) Contributions must be deposited directly to the Trust Account of Legal Aid SA by the client.
- (vi) No employee of Legal Aid SA, or a Judicare practitioner, may receive any contribution directly from the client.
- (vii) The client must provide proof of payment of all contributions to the HoO by no later than the eighth day of each month.
- (viii) If a client fails to make the monthly contribution as required, legal aid may be terminated, after giving notice to the client to make payment.

(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 after the file has been closed on the eLAA system, this should be considered as a new application.

If the application for leave to appeal is successful, then a Special Power of Attorney must be obtained from the client and the Notice of Appeal must be lodged by the local office. Steps must be taken to obtain the relevant court record. The local office must also inform the relevant High Court Unit Manager (HCUM) of the successful leave to appeal application.

(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 petition a higher 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 higher court for leave to appeal outside the permitted time period, then this should be considered as a new application in terms of *Legal Aid Regulation 6*.

If the petition or application for leave to appeal is then successful, a Special Power of Attorney must be obtained from the client and the Notice of Appeal must be lodged by the local office. Steps must be taken to obtain the relevant court record. The local office must also inform the relevant HCUM of the successful leave to appeal application.

(g) Determination of conflict of interest

In all cases where there are multiple accused, the local office must establish if there is a conflict of interest between the accused. Where consultation with the accused is necessary to make this determination, this must be done by a Paralegal, or a Legal Practitioner who will not be instructed in the matter.

Where a practitioner discovers a conflict of interest after being seized with the matter, the legal aid instruction must be returned to the HoO with a report on the conflict established. The matter may be re-allocated appropriately.

(h) Co-accused

Whenever a practitioner is allocated more than one accused in a matter, only one instruction can be issued to the practitioner.

Provided that no conflict of interest exists between their clients, a practitioner may not be allocated more than five accused in one matter.

3.8 Co-ordinating, evaluating and processing applications: Civil cases

Preliminary issues

(a) Cost orders against legal aid recipients

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

(b) Liability for costs and acknowledgement and undertaking by the applicant

The applicant must be provided with an explanation as to the contents and import of the ***Acknowledgment and Undertaking form***, particularly that:

- (i) they would be liable for any costs of the opposing party if this is awarded against them;
- (ii) the cost awarded in favour of the client is ceded to Legal Aid SA;
- (iii) the client is liable for the payment of the benefit to Legal Aid SA;
- (iv) Legal Aid SA and the Legal Practitioner is authorised to collect the moneys due to Legal Aid SA;
- (v) they are not to personally seek payment of any amount claimed in litigation;
- (vi) they are to immediately pay over any amount received because of litigation to the Legal Practitioner instructed or, if the practitioner withdraws, to Legal Aid SA.

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 applicant will sign the acknowledgement after the above has been explained and the applicant confirms that they understand. The original signed document must be in the case file and a copy of the signed ***Acknowledgment and Undertaking form*** must accompany the legal aid instruction sent to a Judicare Legal Practitioner, where the matter is allocated to Judicare.

(c) Approving legal aid for a merit report

Where an applicant applies for legal aid, legal aid must be authorised initially for the furnishing of a merit report, save for those matter types excluded by *Legal Aid Regulation 9(3)*. A merit report is prepared by a practitioner incorporating the following issues:

- (i) Whether the legal aid applicant is plaintiff/applicant or defendant/respondent.
- (ii) The court where the case is to be heard.
- (iii) The nature and amount of the claim.
- (iv) The factual background of the case.
- (v) Full details of the merits of the case and a detailed explanation of the success that is expected.
- (vi) The availability of evidence and witnesses.
- (vii) The need for experts and other witnesses, and the expected costs of their evidence and testimony.
- (viii) The expected date for hearing and the anticipated duration of the trial.
- (ix) The financial ability of the other side to satisfy the claim and costs if the legal aid applicant is successful.
- (x) The expected defences to be raised.
- (xi) The stage the matter has reached by the date of application, and all cost implications of the proceedings to that date.
- (xii) The nature and effect of any previous court orders in the case.
- (xiii) The possibility of settling all or part of the dispute.
- (xiv) 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 a Legal Practitioner is preparing a merit report, they must take the necessary steps to prevent prescription, default judgment or lapsing of the litigant's rights.

The merit report must be submitted on the eLAA system, for consideration by the relevant delegated authority as to whether legal aid should be continued or terminated.

(d) The Legal Practitioner's responsibilities

The ***Acknowledgement and Undertaking form*** instructs the Legal Practitioner to:

- (i) Give notice to any other party to litigation that any payment is to be made only to the Legal Practitioner instructed, or if they withdraw, to Legal Aid SA, and not to the legal aid applicant.
- (ii) 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 25% of any other amounts until the legal aid applicant's debt to Legal Aid SA has been determined and discharged.
- (iii) 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, where a successful legal aid litigant recovered R200 000 general damages and R50 000 party-and-party costs, but whose party-and-party costs were taxed at R50 000 by Legal Aid SA, the following would apply:

- (i) Bank both the R200 000 and the R50 000 taxed party-and-party costs recovered in her/his trust account;
- (ii) Pay R150 000 (75% of the capital) to the client;
- (iii) Pay R50 000 (recovered taxed party-and-party costs) to Legal Aid SA;
- (iv) Pay no benefit to Legal Aid SA as the R50 000 cost recovered is 25% of the capital;
- (v) Pay R50 000 (the balance of the capital) to the client, once accounts are finalised.

The process might be shortened by set-off but the result would still be that the client receives a total of R200 000 (in two instalments) and Legal Aid SA only receives R50 000 as the costs recovered. The practitioner will be paid by Legal Aid SA according to the Civil Judicare Tariffs (in Annexure C of this Manual). Although this example refers to a Judicare practitioner, the same principles apply when legal aid is provided by a salaried Legal Practitioner at a local office.

(e) Labour cases

If an applicant requires legal aid for a Labour Court case, the legal aid applicant should apply at the nearest local office. A specialist Legal Practitioner for labour has been appointed at each of the Cape Town, Durban, Port Elizabeth and Johannesburg Legal Aid SA Local Offices. Labour cases should be referred to these local offices.

(f) Matrimonial matters

An applicant instituting divorce proceedings must provide the original marriage certificate, at their own expense.

(g) Asylum seekers

In terms of the Regulations, legal aid may be granted for a merit report 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*. Normal requirements for processing merit reports apply.

(h) Land cases

If an applicant/s requires legal aid for a land/Land Court case, the legal aid applicant should apply at the nearest local office. Specialist Legal Practitioners for land have been appointed at the National Office and further appointments will be made at various local offices.

Land cases should be referred to National Office or the local offices once the necessary appointments have been made. Where the Legal Executive: Land Rights

Management has confirmed that they do not have the capacity to attend to the matter, they may allocate to Judicare.

Chapter 4: Judicare

4.1 Judicare Accreditation System

The objective of Legal Aid SA's Judicare Accreditation System is to have a database of accredited private Legal Practitioners, to give effect to our mixed model of legal services delivery.

4.2 Application for accreditation

4.2.1 Accreditation of Legal Practitioners

A Legal Practitioner shall apply for accreditation on the prescribed **Accreditation form** and **Accreditation Agreement for Private Practitioners form**.

The application for accreditation should be accompanied by the following documents:

- (i) Proof of identity;
- (ii) Admission Certificate;
- (iii) High Court Appearance Certificate (if applicable);
- (iv) Certificate of good standing from the Legal Practice Council (LPC) (not older than three months from the date of application).

Applicants must submit their application to the local office closest to their legal practice.

The local office where the accreditation application is submitted (referred to as the primary accreditation local office) will be responsible for capturing the application details, including uploading all supporting documents, on the eLAA system.

The HoO must ensure that the application is carefully considered and a recommendation is made to National Office via eLAA.

Where the application is made for courts that are covered by a local office other than the primary accreditation local office, the HoO of that local office must consider the application in respect of those courts and make a recommendation to National Office.

The NOE/CLE or anyone so delegated by them, shall then consider the application for approval/refusal.

Once the application has been considered, a system generated letter will be forwarded to the HoO who will be required to review the letter and then forward a copy to the practitioner.

The HoO will ensure the Judicare practitioner receives a copy of the **Accreditation Agreement**, signed by the NOE/CLE or their delegate/s.

The HoO of the primary accreditation local office must ensure that a briefing session is conducted with the prospective Judicare practitioner within three months of accreditation to discuss, amongst others, the following items:

- (i) General overview of Legal Aid SA.
- (ii) Legal Aid SA's strategic objectives.
- (iii) Legal Aid SA's Client Services Charter.
- (iv) Legal Aid SA's Quality Management Programme.
- (v) The **Accreditation Agreement** and the terms and conditions for accreditation with private practitioners.
- (vi) Service excellence and quality control.
- (vii) Judicare procedures and requirements as detailed in the *Legal Aid Manual*.
- (viii) Submission of accounts and supporting documents.
- (ix) Accounts enquiry procedures.
- (x) Dispute resolution procedures.
- (xi) Suspension and withdrawal of a practitioner's accreditation status.

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 SA.

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

- (i) Must be a practising attorney or advocate;
- (ii) Must be in good standing with the LPC;
- (iii) Must be registered on and be in full compliance with all the requirements of the National Treasury Central Supplier Database;
- (iv) Must be in good standing with the South African Revenue Services.

The following is the experience required in order to accredit for the various court types in criminal matters, as well as the various levels of civil matters:

No.	Criminal: Court Type	Post-Admission Experience
1	DC	Nil
2	RC	5 years
3	HC	5 years

No.	Civil: Levels	General Practice Experience
1	Level 1	Nil
2	Level 2	1 year
3	Level 3	3 years
4	Level 4	5 years
5	Level 5	10 years

Accreditation may be refused, amongst others, on the following grounds:

- (i) Non-compliance with one or more requirements for accreditation;
- (ii) Misconduct by the practitioner in the handling of legal aid instructions;
- (iii) The existence of a damaged relationship between the practitioner and Legal Aid SA;
- (iv) Failure to comply with any requirements of Legal Aid SA's Supply Chain Management Policy;
- (v) If, in the opinion of Legal Aid SA, the practitioner is not a fit and proper person to be accredited on our Judicare programme.

4.3.2 Suspension of accreditation

A practitioner shall be placed on suspension if the practitioner:

- (i) requests in writing that no legal aid instruction should be allocated to them for a specified period.
- (ii) does not update their records with Legal Aid SA.
- (iii) does not follow the procedure for timeous reporting and accounting set out by Legal Aid SA.
- (iv) conducts themselves in a way that results in a damaged relationship between them and Legal Aid SA.
- (v) is placed on the list of restricted suppliers on the Central Supplier Database.
- (vi) is under investigation for any reason including, but not limited to fraud, unethical behaviour or failure to comply with the Manual and **Accreditation Agreement**.
- (vii) pending an inquiry into the withdrawal of the practitioner's accreditation.
- (viii) is employed by Legal Aid SA, whether temporarily or permanently.
- (ix) is interdicted or suspended from the roll by the LPC.

4.3.3 Termination of accreditation

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

- (i) If the practitioner requests in writing that no further legal aid instructions should be issued to them;
- (ii) A practitioner consistently does not comply with the policies, procedures and rules of Legal Aid SA;
- (iii) If the practitioner commits misconduct, fraud or dishonesty;
- (iv) If the practitioner consistently fails to meet Legal Aid SA's quality and reporting requirements;

- (v) If the relationship between Legal Aid SA and the practitioner is damaged;
- (vi) The practitioner is struck off the roll.

4.3.4 Procedure to be followed before a practitioner is suspended from accreditation

If, in the opinion of Legal Aid SA, any of the reasons for the suspension of a practitioner is present, then the practitioner may be suspended with the approval of the relevant PE. The practitioner must however be given a period of two weeks to provide reasons why they should not be suspended.

In matters which in the view of the PE require the urgent and immediate suspension of a practitioner, especially where any delay in actioning the suspension will compromise the interest/s of Legal Aid SA, the PE may act after consulting with the NOE/CLE. An example will be, and without limitation, suspension of a practitioner due to allegation of fraud or bringing the justice system into disrepute.

The suspension must be lifted once the practitioner has remedied the reasons for suspension to the satisfaction of the PE.

4.3.5 Procedure to be followed before a practitioner's accreditation is terminated

If, in the opinion of Legal Aid SA, any of the reasons for the termination of accreditation exist, a letter must be written to the practitioner informing them of the intention to terminate their accreditation and the reasons there for.

The practitioner will be given an opportunity to provide reasons why their accreditation with Legal Aid SA should not be terminated. The practitioner will be placed on suspension pending the decision of the NOE/CLE to terminate their accreditation.

The decision of the NOE/CLE will be provided to the practitioner in writing. Should the practitioner's accreditation be terminated, the practitioner will have an opportunity to appeal the decision to the CEO within three months. The CEO's decision will be final.

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 eLAA system which takes the following factors into account in selecting practitioners who should be offered instructions:

- (i) The Broad-Based Black Economic Empowerment (B-BBEE) status of the vendor;

- (ii) The value of earnings per practitioner, including commitments, over a rolling 12-month period;
- (iii) The practitioner's area of specialisation, where specialisation is the reason for allocating Judicare;
- (iv) The gender of the practitioner.

An ***Instruction to Legal Practitioner form*** will be generated by the eLAA system for every instruction. This must be issued by the HoO to a practitioner. Practitioners should not undertake any legal work until they are in possession of this form and formally accepted the instruction.

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 or as authorised by the NOE/CLE. Where such manual instructions are issued, the HoO must ensure that the eLAA system is updated as soon as possible thereafter so that the electronic instruction can be issued to the practitioner.

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.

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 EME as any enterprise with annual total revenue of R10 million or less. In terms of this category:

- (i) An EME automatically qualifies as a Level 4 contributor in terms of the Code of Good Practice;
- (ii) An EME with at least 51% black ownership qualifies as a Level 2 contributor;
- (iii) 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* 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 QSE as an enterprise with an annual total revenue of between R10 million and R50 million. In terms of this category:

- (i) A QSE with a B-BBEE verification level outside of Level 2 must provide a B-BBEE verification certificate by a SANAS approved service provider if they wish to claim BEE points;
- (ii) A QSE with at least 51% black ownership qualifies as a Level 2 contributor;
- (iii) 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 revised *Preferential Procurement Regulations, 2017* ('revised Regulations'), proof of B-BBEE status level of contributor means the B-BBEE status level certificate issued by an authorised body or person, a sworn affidavit as prescribed by the *B-BBEE Code of Good Practice*, or any other requirement prescribed in terms of the *Broad-Based Black Economic Empowerment Act*.

The revised Regulations provide that the threshold for the 80/20 preference point system is applicable to procurement contracts to the value of up to R50 million and the 90/10 preference point system is applicable to procurement contracts with a rand value above R50 million.

In terms of the revised Regulations, the following table must be used to calculate the score out of 20 for B-BBEE:

B-BBEE Level of Contributor	Number of Points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
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:

- (i) EME Level 4: 12 points
- (ii) EME Level 2: 18 points
- (iii) EME Level 1: 20 points
- (iv) QSE Level 4: 12 points
- (v) QSE Level 2: 18 points
- (vi) QSE Level 1: 20 points

In terms of the normal application of the PPPFA, all procurement below R50 million 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 (i.e., 365 days), 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/Weighting
Level 1	20	1.00 (0%)
Level 2	18	1.02 (2%)
Level 4	12	1.08 (8%)
None	0	1.20 (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.

Recognition of gender is considered after the inclusion of the B-BBEE level status of the vendor. Once the B-BBEE level status has been factored, white female practitioners are given a 10% weighting, whereas African, coloured and Indian female practitioners are given a 0% weighting, whilst white males are given a 20% weighting, whereas coloured and Indian male practitioners are given a 10% weighting, and African male practitioners a 5% weighting. This option combines race with gender thereby making it more favourable for previously disadvantaged groups to benefit by receiving a greater allocation of Judicare instructions. The application of gender after B-BBEE is as follows:

Gender	Race	Weighting
Female	African	0%
	Coloured	0%
	Indian	0%
	White	10%
Male	African	15%
	Coloured	20%
	Indian	20%
	White	30%

The eLAA system ensures that for any matter which has to be allocated to Judicare, the top 4 ranked practitioners (after applying B-BBEE and gender weightings) 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 beyond scope of instructions

A Legal Practitioner must have the written consent of the HoO to render assistance, including applications, beyond the scope of the main instruction.

(b) Receiving moneys from clients

A practitioner acting on a legal aid instruction may not receive any money, gift or gratuity from a client or any other person acting on behalf of a client.

(c) Exclusion of private clients in Judicare matters

No Legal Practitioner who is representing a client on a Judicare instruction may represent another client in the same matter privately.

(d) Notice that legal aid is rendered

The Legal Practitioner must on behalf of Legal Aid SA, inform the court in criminal matters that legal aid is being rendered to the accused by Legal Aid SA. However, in civil matters, this notice must be in writing in terms of section 20 of the Act and a copy of the notice must be retained in the file.

(e) Instructing a correspondent attorney or briefing an advocate

A Legal Practitioner must have the written consent of the HoO to instruct a correspondent attorney or to brief an advocate.

(f) Appointing of experts

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

(g) Legal Practitioner's duty: postponements

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

- (i) Every effort must be made to avoid any delay or postponement in proceeding with a case.
- (ii) 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.

(h) Progress report

A Legal Practitioner must provide Legal Aid SA with progress on the matter in criminal matters after every court appearance, and every 60 days 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 may be adjusted on an annual basis, as approved by the Board, and where adjusted, will take effect on 1 July of each year. The tariff tables will be published on the Legal Aid SA website.

No.	Item	Rate of Increase
1	Fees payable to Judicare practitioners	The percentage of the increase will be determined by the Board after consideration is given to the following: (i) The projected CPI as determined by National Treasury; (ii) The macro increase approved by National Treasury on Legal Aid SA's budget.
2	Vehicular travel	Tariff for Vehicle Class Category A petrol (1551 cc – 1750 cc) as per Department of Transport guidelines.
3	Accommodation	As per National Treasury Circular that is applicable to Legal Aid SA practitioners that is aligned to a 3-star facility.

4.5.1 Criminal trials and appeals

The Judicare Criminal Tariffs that set out the fees and disbursements payable to Judicare Legal Practitioners for criminal trials, criminal appeals and related matters will be published on the Legal Aid SA website.

4.5.2 Civil cases, appeals and non-litigious work

The Judicare Civil Tariffs that cover the fees and disbursements payable to Judicare Legal Practitioners for civil cases, civil appeals, non-litigious work and strategic litigation matters will be published on the Legal Aid SA website.

The Judicare Land Rights Tariffs that set out the fees and disbursements payable to Judicare Legal Practitioners for land matters as previously administered by the Land Rights Management Facility of the Department of Agriculture, Land Reform and Rural Development will be published on the Legal Aid SA website.

4.5.3 Payment of travel and accommodation costs

Judicare practitioners are required to provide proof of address of the main office from where they practise. 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 and accommodation will be paid as follows:

- (i) 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 10km of any travel claim. Therefore, the maximum kilometres that Legal Aid SA will pay for travel per return trip will be 140km.

- (ii) The eLAA 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.
- (iii) Where there is no Judicare practitioner accredited in that area or where such accredited practitioner is not available, a practitioner accredited outside such area may be used provided prior approval is sought from the PE.
- (iv) 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.
- (v) 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 HoO.
- (vi) Legal Aid SA will not pay a subsistence allowance for each day that the practitioner is entitled to an accommodation allowance.
- (vii) Legal Aid SA will pay a Judicare practitioner for travel to a prison in respect of one consultation with their client on the same terms outlined in (i) above. Travel for any further consultations at prisons with the same client must be authorised in writing by the HoO 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 and accommodation 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 Interim accounts

Judicare practitioners may submit interim accounts on a monthly basis for work already completed in a matter. The NOE/CLE (or a person having been given the delegated authority) has the discretion to authorise the payment of interim fees in any matter where same is required more often than on a monthly basis.

4.7 Submission of accounts

When rendering an account, Legal Practitioners have a duty to report fully to the HoO 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. In a criminal matter where the outcome results in a conviction,

the matter will only be considered finalised once a leave to appeal application has been considered by the court, and where the court refuses a leave to appeal application, a petition application is made as requested by the accused. In this regard, the ***Leave to Appeal Election form*** must be completed by the accused and submitted with the account.

In civil cases where an attorney has been authorised to make use of the services of an advocate, they must ensure that the advocate's account is submitted to Legal Aid SA together with their own account. The Legal Practitioner must also ensure that the advocate's account is in accordance with the prescribed tariff.

Where required, disbursements must be verified by original vouchers submitted to Legal Aid SA simultaneously with the account.

A practitioner who fails to submit their account within four months of finalisation forfeits the right to payment as the account will be considered prescribed.

Account enquiries must be directed to the HoO of the local office the Judicare instruction emanated from with full details on the enquiry as well as all necessary supporting documents.

Legal Aid SA endeavours to pay all accounts within 30 calendar days of receipt of the account, provided the matter outcome, charge sheet, copies of court orders/settlement agreements in civil matters and any other documents that Legal Aid SA may require to be submitted are included.

4.7.1 Account assessment and taxation

Legal Aid SA has a right to assess all accounts and tax claims in accordance with our tariffs.

Legal Aid SA has the right to set-off any amounts due to a Legal Practitioner where such practitioner has been overpaid for any reason whatsoever in any prior account.

Where a dispute arises relating to the validity of an account, Legal Aid SA may withhold payment until the dispute has been resolved.

4.8 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 SA Act*.

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

4.8.1 Assessment of Judicare files

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

4.8.2 Court observation

The purpose of court observation monitoring is to improve the quality of the court performance of Judicare practitioners. Local office 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.

Where the quality of a Judicare practitioner has been found to be below the standards required and they fail to rectify this within a period of six months, accreditation may be terminated.

4.9 Compliance with the Protection of Personal Information Act

All Judicare practitioners are required to ensure that they comply with the requirements stipulated in the *POPI Act*, insofar as it pertains to all Legal Aid SA clients who they represent.

Legal Aid SA may from time to time obtain confirmation in this regard by means of questionnaires and/or surveys.

Chapter 5: Co-operation Agreement Procedures

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

Co-operation Agreements form an essential part of Legal Aid SA's mixed delivery model. Co-operation Agreements are entered into with organisations, primarily University Law Clinics, which provide legal services to disadvantaged communities at no cost to the client. Legal Aid SA's funding model for Co-operation Agreements entails the funding of a portion of the operational costs, including salaries of Legal Practitioners involved in the delivery of the legal services. The Co-operation Partner is expected to also share some of the costs and provide some of the necessary infrastructure.

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) policies 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 policies 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.

5.1.3 Unsolicited proposals

Legal Aid SA may receive proposals from institutions delivering legal services to the indigent, which are interested in entering into Co-operation Agreements with Legal Aid SA, even if no request for proposals has been published. Where such an unsolicited proposal has been received and the LSTC considers that it will address a particular need for the organisation, then Legal Aid SA will follow the relevant SCM requirements to seek proposals to address that need.

5.1.4 Procedure for screening Requests for Proposals

An evaluation committee must evaluate all proposals received and make recommendations to the LSTC which must approve all recommendations. 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.

5.2 Monitoring and Managing Co-operation Agreements

5.2.1 General monitoring and reporting provisions

Co-operation Partners must submit quarterly reports to the relevant PO by the seventh day of the month following the end of the quarter. Such reports must include the following aspects:

- (i) Statistics on new matters;
- (ii) Statistics on finalised matters;
- (iii) Outcomes of all finalised matters;
- (iv) Quality management programmes in place;
- (v) Staffing capacity;
- (vi) Challenges experienced.

On an annual basis, Co-operation Partners must submit their audited financial statements to the PO.

Co-operation Partners must ensure access to their offices, as well as to all files, for an annual audit that will be conducted by Legal Aid SA.

5.2.2 Non-compliance by the Co-operation Partner

The PE must report to the LSTC on any breach of contract or non-compliance by a Co-operation Partner with their contractual obligations.

The LSTC will decide on any remedial action to be taken, which may include termination of the Co-operation Agreement.

5.2.3 Financial procedures

Provincial Offices will be responsible for processing the payment of the moneys due to the Co-operation Partner quarterly in advance, subject to the Co-operation Partner complying with the provisions of the Co-operation Agreement.

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 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 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 costs per case as per Legal Aid SA's tariffs for the type of court to be covered by the Agency Agreement.

6.3 Requirements to be appointed as an Agency Partner

Agency Partners must meet the following requirements to be eligible for consideration:

- (i) The practitioner must be a registered Legal Practitioner on the practising roll of the LPC;
- (ii) The practitioner must have a certificate of good standing not more than three months old, issued by the LPC;
- (iii) The practitioner must be registered with the National Treasury's Central Supplier Database and have complied with all relevant requirements;
- (iv) The Agency Partner must have office infrastructure close enough to the court to be able to render a sustainable service.

6.4 Quality assurance

Agency Agreement Partners are subject to Legal Aid SA's quality management programme. Quality audits are conducted on all Agency Partners annually.

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 section 19 of the *Legal Aid SA Act*.

6.5 Managing Agency Agreements

On a monthly basis, the HoO will review the number of new and finalised matters received at the local office 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 HoO will make recommendations to the PE, where necessary.

The HoO will also engage 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.

6.6 Non-compliance by the Agency Agreement Partner

The PE must report to the LSTC any breach of contract or non-compliance by an Agency Agreement Partner with their contractual obligations.

The LSTC will decide on any remedial action to be taken, which may include termination of the Agency Agreement.

Chapter 7: Strategic Litigation Services

7.1 Nature of Strategic 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 and/or vulnerable persons as possible, particularly relating to matters of a constitutional or social justice nature. 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 and/or vulnerable persons than the person or persons to whom legal service is rendered directly.

Strategic litigation services are performed by either the Strategic Litigation Unit, or by local offices of Legal Aid SA. Legal Aid SA also funds strategic litigation by other legal firms, legal NGOs or law clinics.

7.2 Procedure for submission, evaluation and approval of proposals

7.2.1 Procedure for submission of proposals

A proposal for the rendering of strategic litigation services shall be in writing and shall set out:

- (i) the nature and extent of the proposed legal services, as well as evidence that the services offered will benefit a substantial number of indigent and/or vulnerable people;
- (ii) 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.
- (iii) whether the proposed legal services may establish a legal precedent, jurisprudence, or clarify aspects of the law that will be followed in dealing with indigent and/or vulnerable persons in similar matters.
- (iv) whether the proposed legal services may have the potential of resolving a large number of disputes, or potential disputes and obtain wider collective objectives or may improve the lives of a group of persons or a sizeable portion of a group.
- (v) a detailed budget for the strategic litigation services, setting out details of each of the stages of litigation and the total expenditure planned at each stage. This must be in accordance with the Strategic Litigation Fees Guidelines.

The Strategic Litigation Unit will provide monthly reports on all new or current matters that require the consideration of the Constitutional Case Management Committee (CCMC). Progress reports of all pending CCMC matters will be provided on a quarterly basis to the Board, including the approved budget in each case.

The service provider will be required to enter into a written funding agreement with Legal Aid SA and will need to comply with the terms and conditions stipulated in the agreement.

7.2.2 Procedure for evaluating proposals for Strategic Litigation Services

All proposals for strategic litigation services must be referred to the Strategic Litigation Unit. The Strategic Litigation Unit must evaluate all proposals and submit meritorious cases to the CCMC for consideration.

7.2.3 Procedure for consideration of Strategic Litigation proposals

The CCMC is specifically constituted to consider strategic litigation matters, to approve budget for the litigation of these matters and to monitor the ongoing progress of these matters until finalisation.

The NOE and CLE may, in accordance with the Approval Framework, approve an urgent matter or certain steps to be taken in a matter, which must be tabled at the next CCMC meeting.

The CCMC has the final decision as to whether a matter should be funded as a strategic litigation matter.

The authorisation of fees or disbursements on the scale applicable to strategic 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.

7.3 Appeal against decision of the CCMC

The Strategic Litigation Unit shall inform the proposer of the reasons for the refusal to recognise the matter as a strategic litigation matter, as well as the right to appeal this decision within three months of being informed of this refusal.

The grounds of appeal must be submitted to the Strategic Litigation Unit in writing. The Strategic Litigation Unit prepares a report on the appeal for the consideration of the CEO, whose decision will be final. A copy of the report, as well as the decision of the CEO, must be provided to the CCMC for information.

7.4 Tariffs of fees payable by Legal Aid SA

The tariffs for strategic litigation services, as amended by the Board from time to time, will be published on the Legal Aid SA website.

7.5 Obligation of service provider rendering Strategic Litigation Services

The service provider is obliged to render legal services within the approved budget as contained in the funding agreement.

The service provider must provide Legal Aid SA with a progress report within seven days of the end of each quarter of the calendar year.

A finalisation report must also be provided within one month of the conclusion of the matter.

The account must also be provided to Legal Aid SA within three months of the conclusion of the matter.

Where costs are to be recovered from the opposing party, the service provider must report quarterly on the progress with regard to the recovery of such costs.

The service provider should specifically acknowledge the funding/support provided by Legal Aid SA in all media communications.

In order to comply with Treasury Regulations, the service provider must ensure that they are registered with the National Treasury Central Supplier Database, and that their tax clearance status with SARS is valid at the time of entering into the funding agreement.

The service provider must fully disclose to Legal Aid SA all other funding received from another source for the same matter at the time of the application for funding, and throughout the contract of the matter.

The service provider may not extend the scope of work nor deviate from the agreed budget as set out in the funding agreement without prior approval from Legal Aid SA.

7.6 Briefing policy

7.6.1 Purpose

The procurement of strategic litigation 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.

7.6.2 Application of Briefing Policy

7.6.2.1 Strategic Litigation Unit

All reasonable endeavours should be made to:

- (i) identify Legal Practitioners from the ranks of the Broad-Based Black Economic Group (B-BBE Group) in specific practice and interest areas; and
- (ii) strive to achieve the briefing of at least 50% of counsel from the B-BBE Group as defined, of which at least 50% overall should be women in any particular financial year.

7.6.2.2 Service providers

In instances where a service provider submits a proposal requiring funding for their own and external Legal Practitioners, the service provider must ensure that 50% of the external Legal Practitioners derive from the B-BBE Group and are women, unless it can on reasonable grounds be shown that, despite all efforts, this is not possible.

7.6.3 Report to Board

The Strategic Litigation Unit must report annually to the Board regarding the distribution of briefs, detailing:

- (i) the number and distribution of briefs delivered; and
- (ii) the achievement of the briefing policy targets in terms of both numbers and fee value.

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:

- (i) This delegation must be in writing and signed by the NOE/CLE.
- (ii) This delegation must be done in accordance with section 16(2) of the *Legal Aid SA Act* and read with the *Legal Aid SA Approval Framework*.

8.1.2 Limitation of services

Legal Aid SA may limit 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, from time to time, restrict legal costs in any particular matter.

8.1.4 Discretion on increased fees

(a) Increased fees

In general, only fees set out in Legal Aid SA tariffs will be allowed. However, PEs and the NOE/CLE have the discretion to permit payment of increased fees in very exceptional cases for Magistrate Court matters, as per the Approval Framework. However, the approval of increased fees for High Court matters will be determined by the CCMC.

The NOE/CLE must:

- (i) Maintain a record of all increased trial day fees allowed at Legal Aid SA's National Office and Provincial Offices.
- (ii) 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.

8.1.5 Medical costs

Legal Aid SA does not pay costs related to:

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

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

8.1.6 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 HoO immediately and provide details.

The HoO must refer the matter to the relevant PE or PEs (where legal aid has been granted in more than one province) who in all matters, save for strategic 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:

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

8.1.7 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 security or indemnity to effect a writ, and where such requests are in accordance with the rules of court and can be substantiated by the sheriffs, then the persons delegated in terms of section 16(2) are authorised to provide the necessary indemnity to sheriffs.

(b) 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.

8.1.8 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:

- (i) enable as many people as possible to receive legal aid, and
- (ii) 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.

Any person who has reason to believe that a legal aid applicant, recipient, Legal Aid SA employee or Legal Practitioner has committed fraud or engaged in unethical conduct or abused legal aid must immediately and fully report this to the Fraud and Ethics Hotline (0800 153 728) or to an appropriate Legal Aid SA official.

8.1.8.1 Procedure for dealing with suspected fraud or abuse on the part of a legal aid applicant or recipient

(a) Investigation of fraud and abuse

- (i) The HoO receiving the complaint must investigate the complaint.
- (ii) If evidence of fraud or abuse is established, the HoO must provide an opportunity to the person against whom the allegation is made to respond to the complaint.
- (iii) The HoO must thereafter, having considered both versions, communicate their findings to the complainant as well as to the person against whom the complaint is made.

(b) Options available to a HoO should fraud or abuse be established

- (i) Refusal of legal aid.
- (ii) Termination of legal aid.
- (iii) Criminal prosecution.
- (iv) Civil action.

8.1.9 Forensic investigation

In appropriate cases, the PE may request the Internal Audit Executive to conduct a forensic investigation of the financial circumstances of the legal aid applicant or recipient.

8.1.10 Costs in civil cases

- (i) Legal Practitioners representing a client in a civil case must include a claim for costs.
- (ii) Legal Practitioners must take steps to recover all costs awarded in favour of the client.
- (iii) Whenever costs are recovered in a matter where the client is represented by Legal Aid SA, the costs recovered shall be for the account of Legal Aid SA.

8.1.11 Payment of benefit due to Legal Aid SA

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, save where the benefit is obtained in a divorce or land related matter – such benefit is then not payable. This percentage is determined by Legal Aid SA from time to time.

The percentage benefit that is currently payable to Legal Aid SA is as follows:

- (i) Benefit obtained: R0 to R50 000 = 0%.
- (ii) Benefit obtained: R50 001 to R200 000 = 5% of the amount over R50 000.
- (iii) Benefit obtained: Above R200 000 = R7 500 plus 10% of the amount over R200 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 the client after deducting any costs. Where the total amount due to Legal Aid SA in terms of the benefit plus costs exceeds 25% of the total financial benefit/settlement amount received in the matter, Legal Aid SA may only take the amount due in terms of a cost order and an additional amount as benefit so that the total sum taken by Legal Aid SA does not exceed 25% of the capital/settlement amount.

Legal aid clients are liable for any disbursements in a matter, that are not recovered from the opposing party. However, Legal Aid SA will only recover those disbursements from clients who have received a settlement. The 25% limitation does not apply to these additional disbursements. However, where clients made a contribution as part of the Legal Aid SA approval process due to exceeding the means test, this will be taken into account in reducing the benefit due to Legal Aid SA.

It is the duty of a Legal Practitioner acting on a legal aid basis to inform the client of the benefit due to Legal Aid SA, and to ensure that this is paid to Legal Aid SA, together with costs recovered and disbursements.

8.1.12 Tenders, settlements and payments into court

(a) Settlements in civil cases

A Legal Practitioner instructed in a civil or divorce case may at their discretion negotiate a settlement and, with the consent of the HoO, waive a claim for costs.

Annexure A

CONTRIBUTION TABLE

LEGAL AID SOUTH AFRICA COST RECOVERY AND MONTHLY CONTRIBUTION MATRIX – 2023								
	Gross Monthly Income after Income Tax	Contributions at Cost Recovery Percentage Calculated on Average Cost					Rate of Monthly Contribution	
		Criminal Matters			Civil Matters			
		District Court	Regional Court	High Court	DC/RC	Higher Courts		
	Contribution	Contribution	Contribution	Contribution	Contribution	Contributions	Maximum Recovery Period in Months	
1	Up to R12,000	R0	R0	R0	R0	R0		
2	R12,001 - R17,000	R1,000	R1,000	R1,000	R1,000	R1,000	R500 per month maximum	6
3	R17,001 - R22,000	R2,000	R3,000	R4,000	R2,000	R4,000	R500 per month maximum	9
4	R22,001 - R27,000	R3,000	R4,500	R6,000	R3,000	R6,000	R500 - R750 per month maximum	12
5	R27,001 - R32,000	R4,000	R6,000	R8,000	R4,000	R8,000	R500 - R750 per month maximum	12
6	R32,001 - R37,000	N/A	R7,500	R10,000	N/A	R10,000	R1,000 per month maximum	12
7	More than R37,000	N/A	R9,000	R12,000	N/A	R12,000	R1,000 per month maximum	12