



Anti-Discrimination
New South Wales



Memorandum of Understanding

between

Legal Aid NSW

and

Anti-Discrimination NSW

regarding provision of Legal
Services

DATE OF THIS MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made on the _____ day of August 2024.

PARTIES

Legal Aid Commission of NSW ('Legal Aid NSW') is an independent statutory body and statewide public service agency established under the *Legal Aid Commission Act 1979* (NSW)

ABN 81 173 463 438

Anti-Discrimination NSW ('ADNSW') is an independent statutory body established under the *Anti-Discrimination Act 1977 (NSW)* (the *Act*). ADNSW sits within the Department of Communities and Justice.

ABN 36 433 875 185

(together referred to as the '**Parties**')

RECITALS

- A. Legal Aid NSW is an independent statutory body established to assist economically and socially disadvantaged people to understand and protect their rights in the legal system. Legal Aid NSW provides information, advice, minor assistance and representation services in the areas of family, civil and criminal law. It also delivers community legal education programs and distributes a wide range of publications on legal topics.
- B. ADNSW is an independent statutory body which was established to administer the Act. The purpose of the Act is to render unlawful racial, sex, disability, age and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons in NSW.
- C. The Parties intend to collaborate to facilitate a regular civil law service for complainants and proceedings arising under the *Anti-Discrimination Act 1977* (NSW) (the '**Legal Advice Service**'). The Legal Advice Service is provided by lawyers employed by Legal Aid NSW through ADNSW to members of the community.
- D. The primary purpose of the Legal Advice Service is to provide free legal advice:

- i. to socially and economically disadvantaged members of the community, including those with a disability or who are culturally and linguistically diverse
 - ii. in accordance with the overriding principle of early intervention.
- E. The Parties agree to enter this Memorandum of Understanding ('MOU') in respect of the Legal Advice Service, with the intention of:
- i. formalising administrative arrangements and the roles of the Parties and
 - ii. promoting effective co-operation and dispute resolution processes.

1. DEFINITIONS

- 1.1 **Confidential Information** means any information belonging to a Party whether arising from the outreach service or acquired in confidence by one Party from the other including personal, technical, proprietary, operational, or other commercially valuable information belonging to either Party that:
- (a) is by its nature confidential; or,
 - (b) is designed as confidential; or,
 - (c) is information that falls within the scope of legislation set out in Clause 8.1; or
 - (d) the other Party knows or ought to know is confidential.
- 1.2 **Legal issue** includes a question or problem that involves legal rights, obligations or interests arising under anti-discrimination law and may need the help of a lawyer to resolve.
- 1.3 **Legal Services** exclude ongoing assistance or legal representation but include services that provide:
- (a) legal advice in relation to a Service Recipient's legal issue
 - (b) information of general application such as
 - (i) legal rights, and responsibilities
 - (ii) alternative dispute resolution processes
 - (iii) legal, court and tribunal processes
 - (iv) the availability of a grant of legal aid for ongoing representation
 - (v) referrals to other services.
- 1.4 **MOU** means this Memorandum of Understanding.
- 1.5 **Service Recipient** means a person who requests an appointment with the Legal Aid NSW Legal Advice Service through ADNSW and includes both

complainants, potential complainants and respondents but does not include institutional respondents. Legal Aid NSW reserves the right to exercise its discretion to advise a respondent who satisfies the criteria in Clause 3.1 and who passes a conflict check.

2. PERIOD OF LEGAL ADVICE SERVICE

- 2.1 Legal Aid NSW agrees to provide the Legal Advice Service remotely via telephone commencing on the date of this MOU. Face-to-face appointments may be available based on need and will be offered at Legal Aid NSW's discretion.
- 2.2 The Legal Advice Service will proceed as an ongoing service unless terminated in accordance with Clause 14 of this MOU.

3. RESPONSIBILITIES OF LEGAL AID NSW

- 3.1 **Legal Services** will be provided to the following categories of people:
- (a) any person who alleges that they have experienced discrimination and/or sexual harassment in the workplace
 - (b) a person living in a remote or regional area who may have difficulty accessing legal services for that reason;
 - (c) an Aboriginal or Torres Strait Islander person;
 - (d) a person from a Culturally or Linguistically Diverse (CALD) and/or Non-English Speaking (NES) background;
 - (e) a person in custody, detention or another closed environment;
 - (f) a person experiencing homelessness (eg no fixed housing, sleeping rough, couch surfing, emergency accommodation);
 - (g) a young person or child under the age of 21;
 - (h) a person with an intellectual disability and/or cognitive impairment;
 - (i) a person with an acute mental health condition;
 - (j) a person who is a refugee or asylum seeker and arrived in Australia within the last 6 years;
 - (k) a person experiencing domestic or family violence;
 - (l) a person in "exceptional circumstances" which may include financial hardship, or substantial difficulty dealing with the legal system.

The above list is not exhaustive. Legal Aid NSW reserves the right to amend these categories and extend the Legal Service to other people in accordance with its policies which may be subject to change.

3.2 Provision of the Legal Advice Service

- (a) Legal Aid NSW agrees to:
- (i) provide the Legal Advice Service via telephone (or in person as per Clauses 2.1 and 3.3(d)) on the third Wednesday of each month, except where those days fall on a public holiday, or at any other time as agreed by the Parties;
 - (ii) where reasonably practicable, provide ADNSW with the name of the lawyer rostered to attend prior to attendance;
 - (iii) provide Legal Services to Service Recipients regarding their Legal Issue
 - (iv) provide Legal Services to Service Recipients as follows:
 - a. in relation to complainants, at the enquiry or complaint stage, or the comments stage, or both
 - b. in relation to respondents, after receipt of the complaint against them, after they have prepared their response or after receipt of comments;

3.3 Information about the Legal Advice Service

- (a) Legal Aid NSW agrees to:
- (i) in any promotional material or publication about the Legal Advice Service, acknowledge it is being hosted by ADNSW;
 - (ii) from time to time, provide the Manager of Enquiries and Conciliation at ADNSW with up to date printed or digital community information concerning the Legal Advice Service to be included with the acknowledgement of complaint sent to the Service Recipient;
 - (iii) contact each Service Recipient at the time of their appointment on the number provided by ADNSW. If a Service Recipient does not answer their telephone at their allocated time, staff will make further reasonable efforts to contact the client for up to 15 minutes after their appointment time;
 - (iv) after completing the Legal Advice Service, send a completed Booking Sheet to ADNSW indicating which Service Recipients were seen and subject to the Service Recipient's consent, whether any other assistance has been agreed.
- (b) Urgent Appointments:
- (i) on occasions when the Legal Advice Service is completely booked, and ADNSW has identified a person who requires urgent legal advice due to time constraints, ADNSW may make a written request to Legal Aid NSW for a special appointment out of session, and

- (ii) Legal Aid NSW will endeavour to accommodate such requests based on its capacity and after further consultation with ADNSW staff.
- (c) Appointments for clients with a disability:
 - (i) Where ADNSW has identified a person with a disability who requests adjustments to the advice service on the basis of their disability, ADNSW may make a written request to Legal Aid NSW outlining the adjustments requested.
 - (ii) Legal Aid NSW will take reasonable steps to accommodate such requests.
- (d) Face-to-face appointments for clients:
 - (i) Where ADNSW has identified a person who requires a face-to-face appointment, ADNSW will notify Legal Aid NSW by email one week in advance of the Legal Advice Service.
 - (ii) Legal Aid NSW will take reasonable steps to meet the request by arranging an appointment at a local office.

3.4 Other matters

(a) Legal Aid NSW agrees to:

- (i) in the event of a conflict between the interests of a Service Recipient and the interests of another Service Recipient, refer the person to another lawyer or an appropriate external legal assistance service.
- (ii) comply with all reasonable directions given by ADNSW relating to the use of ADNSW resources unless these directions conflict with Legal Aid NSW policies or statutory obligations. In the case of a conflict between Legal Aid NSW policies and obligations and ADNSW directions, Clause 11 of this MOU will apply.

4. RESPONSIBILITIES OF ADNSW

4.1 Administrative matters

ADNSW agrees to:

- (a) primarily communicate with Legal Aid NSW about the Legal Advice Service by email using human.rights@legalaid.nsw.gov.au to ensure that communications are received by all staff who contribute to the Legal Advice Service;
- (b) promote the Legal Advice Service by direct referral, information on websites and social media as it sees fit;
- (c) make referrals to the Legal Advice Service through its enquiry officers, conciliation officers or officers from the Intake Team;
- (d) email the schedule of appointments to Legal Aid NSW one week prior to the advice session along with relevant attachments;
- (e) inform clients attending appointments by telephone that they must be available to receive a call from Legal Aid NSW at the time of their appointment, which will appear as an anonymous number;
- (f) liaise with Legal Aid NSW about any Service Recipients who request or need a follow up appointment, including those who miss their allocated appointment time.

4.2 Scheduling of client appointments

ADNSW agrees to:

- (a) be responsible locally for scheduling client appointments at 45-minute intervals for the Legal Advice Service. The booking sheet will include client name, contact number, and whether an interpreter is required;
- (b) as a general rule, allocate a double appointment if an interpreter is required or ADNSW identifies a Service Recipient as having a special vulnerability;

- (c) schedule appointments at the following intervals:
- 1.00 pm to 1.45 pm
 - 1.45 pm to 2.30 pm
 - 2.30 pm to 3.15 pm
 - 3.15 pm to 4.00 pm
 - 4.00 pm to 4.45 pm

4.3 Promotion of the Legal Advice Service

ADNSW will provide general information to members of the public concerning the availability of the Legal Advice Service, including:

- (i) how they can make an appointment, and
- (ii) advising that it is only available for people who are priority clients, as defined in Clause 3.1.

5. NOTICES

- 5.1 Any notices related to this MOU should be addressed in writing to each Party's authorised representative as set out in Clause 16.

6. OCCUPATIONAL HEALTH & SAFETY

- 6.1 ADNSW and Legal Aid NSW will comply with relevant workplace health and safety legislation.

7. COMPLAINTS

- 7.1 The Parties agree that complaints are to be dealt with in the following way:
- (a) Complaints made in relation to Legal Aid NSW employees are to be referred to the Complaints & Client Service Officer through complaints@legalaid.nsw.gov.au or by contacting the Solicitor in Charge of the Combined Civil Law Specialist Team (CCLST);
 - (b) Complaints made in relation to ADNSW employees are to be referred to the managers of the Enquiries and Conciliation teams through complaintsadb@justice.nsw.gov.au.

8. PRIVACY AND CONFIDENTIALITY

- 8.1 The Parties (including their officers, representatives and employees) will at all times respect the privacy obligations and confidentiality of each other and, in particular, will not disclose to any person or organisation any Confidential Information relating to any other party or any Service Recipient except:
- (a) as required by law
 - (b) where the information is already in the public domain, or
 - (c) with the consent of the other party and consent of a Service Recipient.

- 8.2 The Parties agree to comply with all relevant privacy legislation including but not limited to:
- (a) *Privacy and Personal Information Protection Act 1998*; and,
 - (b) *Health Records and Information Privacy Act 2002*; and,
 - (c) *ss. 25 & 26 Legal Aid Commission Act 1979*.
- 8.3 The Parties also agree to comply with:
- (a) Legal Aid NSW Privacy Management Plan
 - (b) Legal Aid NSW Data Breach Policy
- 8.4 Where a Service Recipient is to receive a Legal Service they can consent to the release of relevant documents from the complaint file. Consent can be given verbally or in writing. Verbal consent will be confirmed by email and forwarded with those documents to the Legal Aid lawyer rostered to attend the Legal Advice Service.
- 8.5 Where a Party becomes aware of a breach or any possible breach of privacy obligations and confidentiality in accordance with this MOU, they will notify the other Party as soon as reasonably practicable after the breach has occurred and undertake any necessary action to mitigate or limit the breach.

9. INTELLECTUAL PROPERTY

- 9.1 The ownership of Intellectual Property which exists before the commencement of this MOU ('Pre-existing Intellectual Property') is not altered, transferred, or assigned merely by virtue of its use by a Party in performing its obligations under this MOU.
- 9.2 The title to, and Intellectual Property rights in, the MOU are, on its creation, owned by Legal Aid NSW.
- 9.3 Any information, know-how, discovery, innovation or invention, resulting from or arising in the course of servicing this MOU which was not reasonably anticipated by the parties ('Serendipitous Discovery') shall be owned by the Party so making the Serendipitous Discovery. Each Party grants to the other a royalty-free, sole licence to exploit the Serendipitous Discovery made by that party for the purposes of this MOU.
- 9.4 Each Party grants to the other Party a royalty-free, non-transferable, non-exclusive licence to use pre-existing Intellectual Property rights owned by the first mentioned Party, and which are directly relevant to the provision of the MOU, for the sole purpose of carrying out the MOU. The licence commences on the commencement of the MOU and terminates upon termination of this MOU under Clause 14.

10. REVIEW

- 10.1 The Parties agree that they will meet at least every six (6) months to review the operation and viability of the Legal Advice Service. Parties are free to raise any issues about the Legal Advice Service in between those review dates.
- 10.2 The Parties will agree on review dates by the end of January of each calendar year.

11. DISPUTE RESOLUTION

- 11.1 If any dispute arises between the Parties in relation to this MOU, the Parties agree to negotiate in good faith to settle the dispute through mutual agreement.
- 11.2 If the dispute cannot be resolved within seven (7) days it will be referred to the Executive Director of Civil Law, Legal Aid NSW and the Executive Manager of ADNSW for resolution.
- 11.3 If the dispute cannot be resolved in accordance with Clause 11.2, it must be referred to a mediator agreed upon by the Parties before any legal or other action is taken.
- 11.4 Parties agree to cover their own costs in relation to any mediation commenced under Clause 11.3 with the costs of the mediator to be paid equally between the Parties.

12. VARIATION

- 12.1 This MOU may be varied by agreement in writing by the authorised representatives of the Parties.
- 12.2 The Parties acknowledge that any changes to the operation of the Legal Advice Service will not be implemented until they have been discussed with, and agreed upon, by the Parties.

13. NO PARTNERSHIP

- 13.1 The Parties agree that entering into this MOU does not create any relationships of employment, agency or service provision between the Parties.

14. TERMINATION

- 14.1 Any party may terminate this MOU by giving the other party thirty (30) days' written notice, including reasons for the termination.
- 14.2 If a party intends to terminate the agreement, the authorised representative will notify the authorised representative of the other party of that intention as soon as practicable, and the reasons for it.
- 14.3 If the MOU is terminated in accordance with Clause 14.1, the Parties agree to continue to fulfill their responsibilities as set out under Clauses 3 and 4 in good faith during the thirty (30) day notice period.

14.4 Following termination of this MOU, any private or Confidential Information held by a Party about the other Party will not be held for longer than required under law at which point it will be destroyed or returned to the other Party as per their reasonable directions.

15. APPLICABLE LAW

15.1 This MOU is governed by the laws of New South Wales.

16. REPRESENTATIVES

16.1 The authorised representative for Legal Aid NSW is:

Name: Meredith Osborne
Position: Executive Director, Civil Law, Legal Aid NSW
Phone: 02 9219 6327
Email: meredith.osborne@legalaid.nsw.gov.au

The authorised representative for the ADNSW is:

Name: Mia Zahra
Position: Executive Manager Anti-Discrimination NSW
Phone: 02 9268 5514
Email: adbcontact@justice.nsw.gov.au

EXECUTED for and on behalf of
Legal Aid NSW



Signature of authorised
representative

MEREDITH OSBORNE

Print name of authorised
representative

EXECUTIVE DIRECTOR
Title of authorised representative
CIVIL LAW

Date

12/9/2024

EXECUTED for and on behalf of the
Anti-Discrimination NSW



Signature of authorised
representative

Mia Zahra

Print name of authorised
representative

Executive Manager
Title of authorised representative

Date

12/9/24