

Dear Colleagues,

Legal Aid NSW like all State Government agencies, must meet significant savings targets over the next few years. This situation has been compounded by two further issues:

- a cut in funding from the Public Purpose Fund; and
- a significant increase in demand for our criminal law services arising from criminal law reforms and increased numbers of District Court trials

These savings cannot be achieved without changes to legal aid policies which will reduce demand for our services and, consequently, reduce pressure on our budget.

At its recent meeting, the Board of Legal Aid NSW considered a number of options regarding changes to policy which could achieve the savings required.

We work with the most disadvantaged people in NSW and the Board considered the proposed policy changes in this context of there being no easy cuts to legal aid.

The Board approved changes to civil law policies which will see a further reduction in grants of legal aid in State civil matters, including public interest environment matters, victims compensation and matters which may come out of the Royal Commission on Child Sexual Abuse.

The Board has also approved proposals to limit legal aid in **defended hearings in the Local Court**. The proposal seeks to make grants of legal aid only available to defendants in defended hearing matters where there is a real possibility of a gaol sentence (including alternatives thereto), unless there are exceptional circumstances.

Over 90% of criminal law work in NSW is finalised in the Local Court. In 2011/12 the total assigned expenditure on Local Court case matters was \$12 million. This has almost tripled since 2005/2006, when assigned expenditure on Local Court case matters was \$4.4 million.

A well resourced police service with greater powers and more sophisticated surveillance and investigatory tools at its disposal, suggests that the workload and cost pressure in the Local Court will continue to increase. The in-house practice simply cannot absorb the extra workload and the assigned budget cannot sustain the increasing expenditure for Local Court case grants.

In developing these proposals, Legal Aid NSW compared its policies on Local Court defended hearings with that of Legal Aid Commissions in other States and Territories. Our current policy in New South Wales is more generous than all other States and Territories. Most of them have a test which restricts availability of legal aid in defended hearings to cases where there is a real

possibility of an *actual* gaol penalty, although some States can still grant aid in exceptional circumstances.

For your information, I attach the following documents for your information:

- Current policy for Local Court criminal matters
- Amended policy in relation to Local Court defended hearings approved by the Board on 30 April 2013
- Guidelines for exceptional circumstances

It is important to consider these policy changes in the following context:

- The current duty service and the policies that apply to it are not affected by this change. It only applies to defended hearing matters where on conviction, it is determined that a gaol penalty, or alternative thereto will result.
- There is an exception where exceptional circumstances are demonstrated and I have attached proposed guidelines to this email. The aim is to preserve the availability of legal aid in defended hearings to those at risk of a gaol penalty, or to those who through nominated (but not exclusive) circumstances, would have substantial difficulty dealing with the legal system.
- These policy changes are not aimed at cutting jobs in Legal Aid NSW. They are aimed at reducing significant assigned expenditure for Local Court case grants. The burden of the savings required for 2013/14 is being shared across the legal aid sector.

It is anticipated that this policy change will result in significantly fewer case grants for defended hearings in the Local Court. In the absence of exceptional circumstances, legal aid is unlikely to be available for less serious summary offences such as shoplifting, goods in custody, assault, assault police, resist arrest, offensive language and minor drug offences. In the event that a person is imprisoned, legal aid will continue to be available for District Court appeals subject to existing policies including a merit test.

As outlined above, it is in the Local Court that over 90% of criminal law work is finalised. Increased police activity resulting in more people being charged, the increased jurisdictional limit of the Local Court, adherence to strict time standards contained in current Practice Notes, the myriad of problems faced by our clients and the availability of various diversionary options as well as traditional sentencing options means that working in this jurisdiction has become an increasing challenge. It is from lawyers in this jurisdiction that I most often hear concerns about workload, the effect of burnout and inability to access flexible work arrangements. Although many of you would not like to see these concerns addressed by policy changes which will impact our clients, one outcome is that the hearing workload for Local Court practitioners will be reduced.

The CEO has written to the Attorney General, Chief Magistrate and the Presidents of the Law Society and Bar Association advising of these changes. He has invited feedback from important stakeholders in the system, and this also includes you as the practitioners who will be working with this new policy on a day to day basis. If you respond to me I will ensure that your responses are considered by the Executive and the Board of Legal Aid NSW.

I will advise you of the policy in its final form and let you know about implementation dates, training and other material which will be made available to assist practitioners in applying the new policy.

You may also be aware that earlier in the year the Board considered changes to Start Up grants of aid in Local and Children's Court matters. These changes eliminate any allowance for waiting time and reduce the amount allowed for mentions. These changes will be implemented from 1 July 2013. You may receive queries from private practitioners to whom in-house matters are assigned. These inquiries should be referred to the Grants Division.

These are difficult times for Legal Aid NSW. In announcing these changes I acknowledge the skill and commitment you have shown in providing representation to our many clients in the Local Court jurisdiction. I acknowledge the impact it will have on clients who will be left without representation and on Courts who will not have the benefit of both parties being represented. These changes are however necessary to preserve the viability of Legal Aid NSW. Put simply, we cannot continue to grant legal aid beyond our ability to properly fund the number of grants being made. Our ability to meet budget ensures that we will be able to continue providing legal services to the clients who need us most.

These changes will be difficult for us, and some of you may resent not being able to provide the services we are accustomed to providing for our clients. There will be teething problems including the interpretation of the new policy, the timing of when to apply it, managing client expectations and managing the reaction from the bench. There may be more appeals to LARC and there will be a necessity to pick up matters on appeal where our assessment regarding the risk of imprisonment was incorrect. There will be further communications regarding these implementation issues. In the meantime, please keep in mind these important matters regarding the Local Court policy change:

- **The policy changes are necessary to control demand for services and hence meet budget**
- **The duty service remains a critical safety net for our clients and will continue according to existing policies**
- **Legal aid will continue to be available to fund representation for clients who need it most: those at risk of imprisonment or who have substantial difficulty dealing with the legal system**

Regards

**Brian Sandland**

Director, Criminal Law Division

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