

Quote in reply: Access to Justice Section: 21000328/28

1 July 2011

Mr Anthony Reilly
Chief Executive Officer
Legal Aid Queensland
GPO Box 2449
BRISBANE QLD 4001

Dear Mr Reilly

RESCISSION OF QLS LEGAL AID WORK GUIDELINES

We confirm our oral advice to you that at their meeting on 27 May 2011, the Queensland Law Society Council decided to rescind the QLS Legal Aid Work Guidelines endorsed by the QLS Council on 31 August 2000. These Guidelines provided guidance about the appropriate proportion of legal aid work that practitioners should undertake as well as guidance about the conduct of legally aided matters.

The QLS Council were most concerned about clause 1.3 which held that:

Legally aided work should not constitute any more than 10% of the gross fees of a solicitor's practice. A solicitor should refuse to accept Legal Aid work which extends the level of gross fees beyond this percentage.

The QLS Council noted that solicitors should be permitted to make their own decisions about legal aid work that they undertake.

QLS Council noted that these Guidelines pre-dated Legal Aid Queensland's Preferred Supplier guidelines and also noted that Legal Aid Queensland imposes its own detailed contractual obligations on preferred suppliers.

The QLS Council held that the guidance about the management of legally aided files provided by the document is provided by other sources, such as the *Legal Profession (Solicitors) Rules 2007* and the proposed *Australian Solicitors Conduct Rules*. The guidance in the Legal Aid Work Guidelines reflects general ethical obligations, and it is undesirable to have multiple statements of the same ethical principles because of the risk of unintentional inconsistencies which may confuse, rather than clarify the ethical position.

The full text of the former Legal Aid Work Guidelines as it previously appeared on the QLS website is set out below:

1. LEGAL AID WORK GUIDELINES

These guidelines have been prepared by the Access to Justice Committee of the Queensland Law Society and endorsed by the QLS Council on 31 August 2000. These standards should form the basis of practice management training for all solicitors.

The guidelines are not meant to dictate a standard of professional conduct, but rather are published to the profession as a helpful guide for consideration in management decisions for all legal practices.

1.1. Obligation to provide Legal Aid Services

- *No lawyer is under an obligation to accept a client on Legal Aid.*
- *Lawyers are encouraged to spread the Legal Aid burden as much as possible.*
- *Lawyers should always be mindful of their duty as officers of the Court which carries with it a responsibility to ensure that the disadvantaged in our community do have access to the justice system.*
- *Lawyers should consider undertaking some pro bono work, if they choose not to participate in representing Legal Aid clients.*

1.2. Responsibility to Legal Aid clients

- *Lawyers should not take on any legally assisted matter unless they have sufficient experience and qualifications to handle the case.*
- *Legal Aid should not be used as a means of gaining experience.*
- *Cases should be assigned to lawyers with skills and experience commensurate with the nature of the work being undertaken.*
- *It is unethical to discriminate in the provision of services to a Legal Aid client by providing a lesser standard of service to that client as compared to a private client such that the quality of representation is adversely affected.*
- *If the lawyer is of the view that the remuneration provided by Legal Aid is inadequate compensation for the work involved and the skills and responsibility required, the lawyer should not compromise the service to the detriment of the client to reflect the fee offered. The lawyer must, instead, refuse the case.*
- *Principals should not assign Legal Aid work to junior or inexperienced members of staff when the work is beyond the skill or competence of staff members.*
- *Principals should not set unrealistic budget targets for professional staff doing large volumes of Legal Aid work. This will lead to frustration and dissatisfaction for the professional staff member, and may have adverse effects on the client's representation.*

1.3. Lawyers and their Legal Aid practice

- *Lawyers are strongly counselled against basing their practice revenue significantly on legally aided work. The level of remuneration is clearly insufficient. To do so could lead to adverse health effects for the lawyer and a lowering of service standards to the client. Both consequences are undesirable.*
- *Legally aided work should not constitute any more than 10% of the gross fees of a solicitor's practice. A solicitor should refuse to accept Legal Aid work which extends the level of gross fees beyond this percentage.*

The former Guidelines have been removed from the QLS Website and a notice placed in next week's *QLS Update*, informing the profession about this policy change.

Please feel free to contact me if you wish to discuss this issue further.

Yours faithfully

Bruce Doyle
President