


1 November 2021

Our ref: [BDS-ATJ]


**Confidential**

The Hon Cameron Dick MP  
Treasurer and Minister for Trade and Investment  
GPO Box 611, Brisbane QLD 4001



Copy to:

The Hon Shannon Fentiman MP  
Attorney-General and Minister for Justice,  
Minister for Women and Minister for the  
Prevention of Domestic and Family Violence  
GPO Box 149, Brisbane QLD 4001



Dear Treasurer

**Legal Aid Queensland preferred supplier rates**

The Queensland Law Society (QLS) writes to raise concerns of its members about Legal Aid preferred supplier rates. QLS notes that this has been a concern raised by its membership over a long period of time.

It is the QLS view that access to justice is fundamental to the rule of law and the realisation of human rights. To achieve effective access to justice in complex matters, people require access to quality legal advice and representation. Those who lack the means to pay for legal representation require access to an effective legal aid system. Legal Aid Queensland (Legal Aid) plays a critical role in the community by providing legal information and services to those who cannot afford private legal services.

One of the ways in which Legal Aid strives to meet the legal needs of the community is through outsourcing certain work to Legal Aid preferred suppliers. As you know, preferred suppliers are private legal practitioners who have agreed to undertake Legal Aid work on behalf of Legal Aid and are remunerated by Legal Aid in line with Legal Aid's preferred supplier scale of fees. Preferred suppliers undertake approximately 75-80% of legally aided work.<sup>1</sup>

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<sup>1</sup> Legal Aid Queensland, Annual Reports 2016-17, 2017-18, 2018-19, 2019-20.

<https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2019-20/lag-annual-report-2019-20.pdf>,

<https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2018-19/lag-annual-report-2019-lr.pdf>,

<https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2017-18/lag-annual-report-2017-18.pdf>

## Legal Aid Queensland preferred supplier rates

QLS is concerned that the fees paid by Legal Aid to preferred suppliers have fallen far below what is fair and reasonable, and cannot sustain an effective and viable Legal Aid practice within Queensland. Since the beginning of the preferred supplier scheme in Queensland in 1997, there have been few increases in the Legal Aid preferred supplier rates. Hourly rates under the Legal Aid scale of fees are low and this issue is compounded by the 'capped' fees for most services, and the fact that Legal Aid rates are often expressed in a lump sum.

As an example, according to Legal Aid's scale of fees, a solicitor may obtain a grant for a fixed fee of \$660.80 for a full day appearance in the Magistrates Court.<sup>2</sup> Our members advise that these rates are less than half of what private lawyers would typically charge for the same services.

By comparison, other legal assistance schemes provide for substantially higher rates. For example, the Commonwealth Legal Financial Assistance Scheme, administered by the federal Attorney-General's Department, provides for an hourly rate of \$290.00 (inclusive of GST) for solicitors.<sup>3</sup> These rates are payable for attendances (including in conference, appearing in court and instructing in court), reading documents, preparing documents, and certain file work.<sup>4</sup>

In other jurisdictions, Attorney General's Departments publish rates payable to legal representatives engaged by and on behalf of Government departments and agencies. For example, in New South Wales, the rate to engage a solicitor is \$295 per hour with a daily maximum of \$2,950 plus GST.<sup>5</sup> Similarly, in South Australia, the Crown Solicitor's Office can approve public authorities to outsource work to private legal practitioners, who can bill according to a fee structure. The 2020-21 rates for private solicitors ranges from \$358 per hour to \$398, depending on the nature of the work.<sup>6</sup>

In our view, these rates provide an indication of an acceptable market rate for outsourced legal work and demonstrate that the current preferred supplier rates fall short of providing an acceptable standard of remuneration for the work of a legal representative.

The issues of a low hourly rate are compounded by the fact that Legal Aid grants are typically limited in scope, allowing for a limited number of mentions and/or conferences. There is no funding for mentions in excess of what is allowed in the grant, regardless of the reasons for

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[reports/2017-18/laq-annual-report-2018-web.pdf](https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2017-18/laq-annual-report-2018-web.pdf),

<https://www.legalaid.qld.gov.au/files/assets/public/publications/about-us/corporate-publications/annual-reports/2016-17/legal-aid-queensland-annual-report-2016-17-final.pdf>.

<sup>2</sup> Legal Aid Queensland, *Scale of fees- criminal law*, (1 October 2018)

<https://www.legalaid.qld.gov.au/files/assets/public/work-instructions/grants/scale-of-fees-2020-criminal.pdf>

<sup>3</sup> Commonwealth Legal Financial Assistance Schemes Assessment of Costs cl 2.1, available at:

<https://www.ag.gov.au/system/files/2020-06/Commonwealth%20Legal%20Financial%20Assistance%20Schemes%20-%20Assessment%20of%20costs.pdf>.

<sup>4</sup> Commonwealth Legal Financial Assistance Schemes Assessment of Costs cl 2.2, available at:

<https://www.ag.gov.au/system/files/2020-06/Commonwealth%20Legal%20Financial%20Assistance%20Schemes%20-%20Assessment%20of%20costs.pdf>.

<sup>5</sup> New South Wales Communities & Justice, 'Attorney General's rates for Legal Representation', available at: <https://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/attorney-generals-rates-for-legal-representation.aspx>.

<sup>6</sup> Government of South Australia Attorney-General's Department, 'Private firms and practitioners' available at: <https://www.agd.sa.gov.au/justice-system/crown-solicitors-office/private-firms-and-practitioners>.

## Legal Aid Queensland preferred supplier rates

those additional mentions, such as adjournments sought by police. This significantly reduces the options available to a defendant who is funded by Legal Aid, unless the lawyer conducts that work pro bono. In **Appendix A** we have included de-identified examples provided by one of our members, which illustrate the difficulties caused by this funding model.

Legal Aid work itself can be complex and time consuming, however, lump sum payments might cover only a couple of hours of work by a solicitor and do not account for cases that may require additional preparation time. Depending on the complexity and nuance of the case, preparation can reasonably take much longer than the hours covered by the lump sum payment. We highlight that Legal Aid is typically granted to those defendants who will receive at least 6 months in custody and where the duty lawyer cannot deal with the matter. Consequently, by their nature, these matters tend to be complex and usually require an element of case conferencing and a sentence listing with substantial preparation.

In the context of this complexity and the capped Legal Aid fees, in many cases, solicitors work additional hours for no financial returns in order to provide a proper service for their clients. Our members report that, in many matters, they undertake the majority of the work in legally aided matters pro bono in order to provide effective representation and meet their ethical obligations.

In addition, we note that there is a discrepancy in fees paid to preferred suppliers for representation at the Mental Health Review Tribunal.

In 2006, the *Study of the Participation of Private Legal Practitioners in the Provision of Legal Aid Services in Australia* noted that low hourly rate and issues with the number of hours allocated under the stage of matter payment structure were the key reasons for disengagement from legal aid among firms.<sup>7</sup> That study revealed that, as a consequence, approximately 33 percent of family and/or criminal law firms had moved away from providing Legal Aid.<sup>8</sup>

The issues observed in the Study continue to be a problem among the legal profession. QLS is aware that a number of firms and experienced lawyers refuse to participate in the preferred supplier scheme because of the low rates and capped lump sum payments, coupled with the complexity and time consuming nature of many Legal Aid matters. Consequently, the low preferred supplier rates provide legally aided persons with less options and risk perpetuating an inequitable system whereby Legal Aid cases are afforded less time than private clients who can afford to pay for adequate preparation and appearance time.

### Recommendations

Preferred suppliers play a critical role in Queensland's Legal Aid framework, undertaking the majority of legally aided work. However, there is a significant disparity between the rates paid to preferred suppliers, and those received in private practice. Low preferred supplier rates contribute to disengagement from Legal Aid work, raising questions about the long-term sustainability of the preferred supplier scheme.

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<sup>7</sup> Legal and Constitutional Affairs Committee, 'Chapter 4 The Cost of Delivering Justice' in *Access to Justice* (Report, 8 December 2009) [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2008-10/access\\_to\\_justice/report/c04](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2008-10/access_to_justice/report/c04)

<sup>8</sup> Legal and Constitutional Affairs Committee, 'Chapter 4 The Cost of Delivering Justice' in *Access to Justice* (Report, 8 December 2009) [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2008-10/access\\_to\\_justice/report/c04](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2008-10/access_to_justice/report/c04)

## Legal Aid Queensland preferred supplier rates

QLS is aware that, in recent times, there have been a number of practices cease doing legal aid work, particularly in regional Queensland. The last decade has also seen a substantial increase in the in the number of lawyers working in house for Legal Aid Queensland, particularly in the offices in regional Queensland. Our members report that the salary rates paid to in house lawyers at Legal Aid Queensland are significantly higher than the salaries that firms doing legal aid work are able to pay their employed solicitors. While QLS does not seek to reduce the salaries paid to Legal Aid Queensland staff, we note that these have increased year on year, both as a result of reclassification of positions and as a result of annual percentage increases. Preferred supplier rates are not indexed and have fallen far behind.

QLS recommends a review of the Legal Aid preferred supplier rates, with a view of increasing fees payable to preferred suppliers. QLS acknowledges that Legal Aid itself has limited resources, and QLS advocates for an increase in funding to Legal Aid Queensland to allow it to increase its rates to a fair and reasonable level. We note that the government of New South Wales has recently embarked on a program to bring preferred supplier rates to \$195 per hour over four years.

QLS encourages the government to also explore additional funding sources for Legal Aid Queensland. We note that money and property forfeited as proceeds of crime is sold and returned to the State's consolidated revenue fund, to be reinvested in the community. The Crime and Corruption Commission (**CCC**) is responsible for recovering the proceeds of crime under the *Criminal Proceeds Confiscation Act 2002*. In 2019-20 the CCC obtained assets valued at \$8,994,886 by exercising its powers under this Act and 100 percent of these proceeds were forfeited to the State consolidated revenue fund.<sup>9</sup>

QLS considers that Legal Aid's funding position may be fortified if the distribution of proceeds of crime were guided by funding priorities.<sup>10</sup> These priorities may require, for example, that a certain percentage of proceeds of crime forfeited to the State be reinvested in Legal Aid to bolster its financial position. In turn, this could assist to finance higher preferred supplier rates.

When legal aid commenced in Australia, rates paid were set at 80% of the current court scale. They have fallen far below this, and it is well known that court scales are not reflective of market rates. We consider attention should be directed towards increased preferred supplier rates in line with, at minimum, 80% of court scales of fees. QLS further considers that the structure of Legal Aid fees that favours lump sum payments should be reconsidered, as such a model fails to account for cases that differ in complexity and therefore require more or less preparation time.

Finally, while it is no substitute for regular review and reassessment of fees, QLS considers that preferred supplier scales should be indexed yearly, in line with the Queensland Treasury's Government indexation rate, to ensure that rates are increased regularly to account for inflation.

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<sup>9</sup> <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/CCC-Annual-Report-2019-20.pdf> p. 30

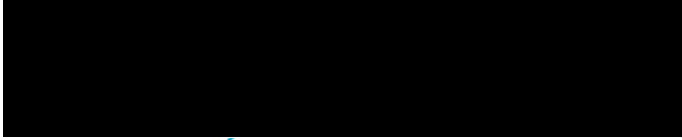
<sup>10</sup> See e.g. the Gambling Community Benefit Fund, which is guided by funding priorities to ensure funds are distributed consistently and fairly <https://www.justice.qld.gov.au/initiatives/community-grants/guidelines/priorities>

## Legal Aid Queensland preferred supplier rates

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

We would value the opportunity to meet with you to discuss these matters further.

Yours faithfully



Elizabeth Shearer  
**President**

## APPENDIX A

By way of background, I am the director of a small firm that only practices in criminal, traffic and domestic violence law. I employ one solicitor. I am a preferred supplier for Legal Aid Queensland and am currently on the following panels:

- General crime
- Youth crime
- Life crime
- Domestic violence

I am also an accredited duty lawyer for Magistrates Court, Children's Court and Domestic Violence Specialist Court.

I am currently giving serious consideration to removing my firm from the youth crime and domestic violence panels due to the low rates paid for those matters compared to the amount of work required.

In relation to youth matters, there is no funding available for bail applications, of which there are usually more than one conducted for a juvenile before their matter is finalised. There is also no additional funding available where we hold a grant of aid for a juvenile and they are charged with more offences before we finalise the original matters. This is also a common occurrence for juveniles. I am often required to attend court at short notice on numerous occasions for juveniles and apply for bail. At the moment due to the media interest, there is often an application by the media to be present in court before the bail application is heard. The majority of those appearances are not funded by Legal Aid Queensland and it has become impossible to effectively represent a juvenile on the rates paid by Legal Aid Queensland.

The same situation exists for my practice currently with domestic violence matters. The work required to effectively prepare affidavit material is not adequately compensated by Legal Aid Queensland so I am considering removing my firm from that panel.

The current grant of aid for a Magistrate Court sentence for an adult or juvenile is \$660.11 (inclusive of GST). This is less than ½ of what private lawyers would charge for a Magistrate Court sentence. Legal Aid is only granted to those defendants who will receive at least 6 months in custody and where the duty lawyer cannot deal with the matter. Therefore, they are always complex matters that usually require an element of case conferencing and a sentence listing with substantial preparation.

The current grant for a committal in the Magistrates Court is less than \$600. The fee does not even come close to covering the fees for the lawyer to review a Brief of Evidence and provide advice in relation to it. It also restricts the number of mentions paid to two, regardless of the reason we might be required to appear at more mentions, such as the Brief of Evidence not being provided by police and adjournments sought by them. There is no funding available at all if the defendant wishes to conduct a directions hearing if there are disclosure issues, or if they wish to proceed by way of full hand-up committal with a no case submission. This significantly reduces the options available to a defendant who is funded by Legal Aid Queensland, unless the lawyer conducts that work pro bono. There is also no funding available to conduct a bail application in the Magistrates Court for a defendant at any stage of the matter.

## Legal Aid Queensland preferred supplier rates

More generally in relation to general and life crime matters, the funding available is wholly insufficient. The grants available for these matters are not sufficient to provide competent legal representation for a matter and we are undertaking the majority of the work pro bono to provide effective representation. For example, the grant of aid for a District or Supreme Court trial only allows for one or two conferences with the Solicitor and Barrister, and two mentions in court. They refuse to pay conferences conducted with the Solicitor only and will not pay for any conferences or mentions in excess of what is allowed in the grant. In Townsville, due to our local practices, the Solicitor is required to appear in person at the indictment presentation, arraignment, two separate trial review dates and any other mentions that arise in the meantime. We have often exhausted our funding for mentions before the matter is listed for trial, and certainly before we appear at a trial review. In terms of conferences, it would be completely unprofessional and bordering on incompetent to represent a defendant at trial after having only two conferences with them.

In 2020 I represented a defendant at a Murder trial in the Supreme Court.

The trial was adjourned once due to the COVID outbreak. It was then adjourned at short notice on the Crown's application due to a witness issue. I had to re-brief Counsel between the first and second listing and the trial proceeded on the third listing.

Leaving aside the issues about not being reimbursed for the preparation each time it was delisted, or the time I had blocked out in my diary (which equated to 6 weeks over the year), or the various mentions I appeared on; I claimed the 6 conferences I had conducted with Counsel. That did not include the conferences held during the trial outside of business hours (before and after court each day, as well as during any adjournment) and the conferences conducted without Counsel in the lead up to trial.

The invoice was amended by Legal Aid Queensland and only one conference was paid as that it all that was allowed under the grant of aid I had for the matter. The work undertaken on that particular file far exceeded the amount I was paid by Legal Aid Queensland and amounted to approximately 1/5 of what I would have charged if it was privately funded.

It is unlikely I would represent a defendant at a Supreme Court trial again on Legal Aid rates due to that recent experience. That was also a file I agreed to accept less than one month before the first trial listing because there were issues with his legal representation by the Townsville in-house Legal Aid lawyers and the file was significantly unprepared for trial.

Generally in my experience the fees payable for legal aid matters are insufficient and it is becoming almost impossible to continue to undertake this work when I consider the commercial benefits of it. I am also aware that there are a growing number of firms who are no longer preferred suppliers for Legal Aid Queensland.