

REPORTING CRIMINAL OR VIOLENT BEHAVIOUR

The limitations of client confidentiality

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This fact sheet provides information for Legal Aid NSW solicitors about what to do when a client discloses an offence or an intention to commit an offence

When a client tells you they have committed a crime

You might think that because of the rules of confidentiality, when a client tells you they have committed a crime, you are prevented from telling anyone about it. This is not necessarily the case.

The *Crimes Act* 1900 requires the disclosure to authorities of information about the commission of serious indictable offences. However, in most circumstances the fact that the information was obtained in the course of practising as a lawyer will be a reasonable excuse not to disclose the information. An exception would be if the disclosure would help to prevent a crime of violence (see below).

You may have to cease acting for a client who discloses a criminal offence. It will depend on the particulars of the case. Ceasing to act for a client might be necessary, for example, where the disclosure creates a conflict between your duty of candour to the court and your duty of confidentiality, competence and diligence to the client.

When a client tells you they intend to commit a crime

You might think that when a client tells you they intend to commit a crime, you can't do anything about it. This is not the case. While confidentiality generally prevents a solicitor from disclosing information disclosed by a client, the Solicitors' Rules provide that a solicitor may disclose confidential information

to appropriate authorities:

- where the law would probably compel a disclosure despite the client's claim of confidentiality; and
- the disclosure is for the sole purpose of avoiding the probable commission or concealment of a crime; for example, in circumstances where the client is threatening violence against a third party.

While a solicitor is under no positive duty to make a disclosure in such circumstances, where the disclosure is necessary to prevent or lessen a serious or imminent risk to the client or another person the solicitor is unlikely to attract criticism for disclosing information.

Appropriate authorities might include, for example, law enforcement authorities such as the NSW Police Force or the Australian Federal Police. Depending on the circumstances, it might also be appropriate to inform other organisations such as the mental health crisis team in your area. It will not be appropriate to disclose information to the potential victim of a crime.

Do I have to seek authorisation before disclosing this information?

Section 26 of the *Legal Aid Commission Act* 1979 prohibits staff from disclosing information about anyone who has applied for legal aid, anyone who has received a grant of legal aid, and anyone who has attended an advice service, unless that person has consented to the disclosure of that information.

Therefore, if you have concerns, report the matter to your supervisor. Legal Aid NSW may then choose to disclose the information via its authorised officer.

For more information

This fact sheet only provides general information, and each case is different.

To discuss your specific case, please contact the Legal & Policy Branch on 9219 5034 or at legalpolicy@legalaid.nsw.gov.au.

You should also read Fact Sheet #8 – [Answering Police Questions about a Client](#).