

Proposed Legal Practice Rules (Solicitors) 2014

Legal Aid NSW submission

to the Legal Services Council of Australia

January 2015

Introduction

Legal Aid NSW is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged. Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and private practitioners.

Legal Aid NSW welcomes the opportunity to provide comment and feedback on the proposed Legal Profession Conduct Rules for solicitors (Solicitors' Rules).

Legal Aid NSW notes that the proposed Solicitors' Practice Rules do not mirror the solicitor rules that are currently in place in New South Wales.

In the NSW Solicitor Rules 2014, there are two practice rules that deal specifically with applications for legal aid in relation to criminal trials and criminal appeals.

['Solicitors' Rules - 45 - Legal aid application - criminal proceedings](#)

45.1 A practitioner, who has accepted instructions to act for an accused person required to stand trial for a criminal offence, subject to the person's obtaining a grant of legal aid, must assist that person to apply for the grant as soon as practicable after receiving instructions, and not later than thirty (30) days before the commencement of the trial.

45.2 If instructions to apply for a grant are received within thirty (30) days of the trial, the practitioner must serve on the Registrar, or listing director of the Court, notice in writing that an application for legal aid has been made, and explaining the circumstances in which the application is made, and forward a copy of that notice to the Legal Aid Commission.

45.3 The practitioner must, thereafter, consult with the Legal Aid Commission in respect of the application, and give notice of the application to the prosecution and, if necessary, apply to the Court for directions.

Solicitors' Rules - 46 - Legal aid – Court of Criminal Appeal proceedings

46.1 A practitioner who accepts instructions from an accused person who is an appellant to the Court of Criminal Appeal must not terminate the retainer and withdraw from the proceedings on the ground that the client has failed to make arrangements satisfactory to the practitioner for payment of the practitioner's costs, unless the practitioner has, not later than thirty (30) days before the date appointed for the callover at which the hearing date of the Appeal will be set -

46.1.1 served notice in writing on the client of the practitioner's intention to terminate the retainer and withdraw from the proceedings at the expiration of seven (7) days if the client fails, within that time, to make satisfactory arrangements for payment of the practitioner's costs, and

46.1.2 delivered a copy of that notice to the Registrar of the Court of Appeal.

46.2 If a practitioner does not, in the circumstances described in Rule 46.1, terminate the retainer and withdraw from the proceedings, but undertakes to assist the appellant to apply for a grant of legal aid:

46.2.1 The practitioner must ensure that the application for a grant of legal aid is lodged with the Legal Aid Commission as soon as practicable, and not later than ten (10) days prior to the callover, if that is practicable.

46.2.2 If, in the circumstances, it is not practicable to lodge the application for legal aid earlier than ten (10) days prior to the callover, the practitioner must, before the callover date, serve on the Registrar of the Court of Criminal Appeal notice in writing of the lodgement of the Application for Legal Aid, containing an explanation for its late lodgement, and must serve a copy of that notice on the Legal Aid Commission.

46.2.3 The practitioner must, thereafter, consult with the Legal Aid Commission in respect of the application, and give notice of the application to the other parties to the Appeal and, if required by the Legal Aid Commission, apply to the Registrar of the Court for direction'.

In New South Wales these rules work in conjunction with Court Practice Notes and Legal Aid NSW Policy. The Rules ensure private lawyers are aware that applications for legal aid in relation to criminal indictable trials and appeals must be made prior to the cut-off timeframe which not only assists the courts and Legal Aid NSW but the administration of justice.

Legal Aid NSW submits that this rule could be adopted across all Australian states and territories.

Enshrining this practice as a professional obligation, ensures legal aid commissions can conduct criminal matters in the most cost effective and efficient manner and as it reduces the risk of court delays it makes it a very cost effective practice for the court systems.

Thank you for the opportunity to make these submissions. If you would like further information, please contact Aideen McGarrigle on 9219 5701 or at aideen.mcgarrigle@legalaid.nsw.gov.au