

Conflict of Interest Policy

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1. How we manage conflict of interest

Legal Aid NSW uses information barriers to avoid conflicts of interest.

This approach enables us to deliver legal services to as many socially and economically disadvantaged people across NSW as possible.

They are made up of a number of measures to make sure they are effective. Those measures are set out in the administrative rules, guidelines and protocols.

The protocols are summarised in section 3 of this policy. You must read the full protocols with this policy.

The information barriers comply with the Solicitor's Conduct Rules, case law and the Information barrier guidelines developed by the Law Society of NSW.

2. What are our information barriers?

2.1 Permanent information barriers

2.1.1 Information barriers for 'short services'

Our advice, duty and minor assistance services are 'short services'.

An information barrier separates every solicitor who provides a short service from the rest of the in-house practice. Each solicitor is a 'screened unit' and each short service is screened from the rest of the in-house practice.

The information barrier prevents confidential information moving in either direction between the solicitor providing the short service and the in-house practice.

What this means for 'short services'

You can provide a short service without doing a conflict check.

You are only prevented from providing a short service if you have actual knowledge of confidential information about the other party.

What this means for 'ongoing services'

Litigation services and Extended Legal Assistance (ELA) are 'ongoing services'.

When you provide an ongoing service, you must do a conflict check of all ongoing services—unless it is an ELA service provided by a screened specialist unit. It must not include a check against short services.

2.1.2 Information barriers around ‘screened specialist units’

There are information barriers around some specialist services. Each of those specialist services is a ‘screened specialist unit’.

The information barrier separates the screened specialist unit from the in-house practice. This information barrier prevents confidential information moving in either direction between staff in the specialist unit and the in-house practice.

The information barrier also includes an electronic firewall. Staff in screened specialist units cannot view the electronic client records held outside of their unit.

What this means for specialist units

Staff in the specialist units can provide a short service without doing a conflict check.

Before providing an ELA service they must do a conflict check against ongoing services provided within the unit.

Before providing a litigation service they must do a conflict check against all ongoing services provided by the in-house practice—except an ELA service provided by another screened specialist unit.

What this means for the in-house practice

When the in-house practice does a conflict check it must include a check against all litigation services provided by the screened specialist unit but not an ELA service.

2.2 Temporary information barriers

2.2.1 When a conflict is identified in the course of a current matter

If a conflict is identified during a litigation matter (the ‘affected matter’) a temporary information barrier will separate staff working on the affected matter from the confidential information and any staff with knowledge of that information.

The information barrier prevents confidential information moving from:

- the in-house practice to staff working on the affected matter, and
- staff with knowledge of that information to the in-house practice.

The solicitor with conduct of the affected matter can continue to act in the matter because we have avoided the conflict by establishing the information barrier.

The temporary information barrier will stay in place until the affected matter is over.

2.2.2 When a new solicitor has confidential information that is relevant to a current litigation matter

If a solicitor joins Legal Aid NSW and has confidential information about another party in a matter, we may create a temporary information barrier to quarantine that employee from the legal team involved in the proceedings. This will allow us to keep that matter in-house.

The information barrier will separate the new solicitor from employees working on the affected litigation matter.

3. How we keep our information barriers effective

3.1 Communication between employees

You should take care not to transmit confidential information or documents across an information barrier.

You can only discuss clients and their matters with staff who are authorised to have this information, and those discussions must be for work-related purposes only. The administrative rules set out which staff are authorised to have this information.

3.2 Access to client records

You must only access client records if you are authorised to do so, and for work-related purposes only.

All files must be stored in a secure place where they can only be accessed by authorised employees.

Client records are protected by administrative rules to ensure that only authorised employees can access them. Screened specialist units have an electronic firewall as an additional protection.

3.3 Administrative rules

You must comply with the Administrative Rules that apply to your role. These rules:

- set out which staff can work on a matter
- set out who staff can discuss a matter with
- ensure that other employees do not access any files, documents or electronic records about a matter, and
- set out other rules staff need to follow to keep information confidential.

3.4 Conflict Support Person

A Conflict Support Person will be appointed for each:

- screened specialist unit
- section in Central Sydney, and
- regional and metropolitan office.

They will:

- be responsible for overseeing each information barrier to make sure it is effective, and
- decide if extra measures are needed for a particular unit or matter—for example, physical separation of employees, dedicated printers and electronic firewalls.

3.5 Education program

All staff must undertake training on conflict of interest, information barriers, and this policy.

3.6 Undertakings

All employees give a written undertaking to comply with this policy and the protocols when they sign the Legal Aid NSW Code of Conduct.

A Conflict Support Person may ask someone to give a further undertaking about confidential information, and will decide the form and content of that undertaking.

3.7 Informed consent from clients to how we manage confidential information

Clients who receive a service are given a disclosure statement that tells them how we will manage their confidential information and the confidential information of another person who may be related to their legal problem.

3.8 Compliance with the policy

All staff must comply with this policy. A contravention of this policy or the protocols may be a breach of the Code of Conduct and under the *Government Sector Employment Act 2013* and the *Government Sector Employment Rules 2014*. A breach of the Code of Conduct may lead to a staff member being dealt with for misconduct under Part 8 of the Code of Conduct.