

Public Consultation – Receipting of Trust Monies

Legal Aid NSW Submission
to the Legal Services Council

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (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 socially and economically disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 35 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

Legal Aid NSW welcomes the opportunity to respond to the Legal Services Council review of the Legal Profession Uniform General Rule 36(4).

If you would like further information, please do not hesitate to contact Paula Lamonaca, Solicitor Accounts Receivable Unit on 9219 5699 or via email on paula.lamonaca@legalaid.nsw.gov.au.

The Review

The review of the Legal Profession Uniform General Rule 36(4) (Rule 36(4)) seeks views on whether law practices should be required to provide a receipt in every instance that money is received into a trust account, either directly from the client or via bank transfer from the client or third party payer.

Legal Aid NSW experience

One of the circumstances in which monies may be received into the Legal Aid trust account, is where a Legal Aid NSW solicitor acts as the Independent Children's Lawyer in a family law matter. The parents of the child are required to pay monies into the trust account for the costs of the expert report. Sometimes, the payment for these expert reports may be made by relatives of the parties, or other third parties that are not known to Legal Aid NSW.

As a result Legal Aid NSW receives a large number of electronic funds transfers (EFT) from third parties for payment of expert reports on behalf of clients. It is often difficult and time consuming to try and ascertain the identity of the specific person paying the funds into the trust account when no details are provided in an EFT transaction. It is even more challenging trying to locate contact details of a third party so that a receipt can be provided to them, pursuant to the requirements of Rule 36(4). As a consequence, the administrative burden on Legal Aid NSW to ensure we can comply with Rule 36(4) has been significant.

We have also found there are undue costs attached to ensuring compliance. For example, requesting a bank trace to locate the payer currently costs \$35 per search, regardless of whether any new information is received.

Recommendation

Legal Aid NSW supports the draft amendment based on option 1: that a receipt must be given on request, to the person from whom the trust money was received.