

Removal Guidelines

January 2024

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1. Authority

The authority for Legal Aid NSW to remove a Law Practice from one or more panels and/or to deem an Associate ineligible to undertake legal aid work is provided under s49 of the *Legal Aid Commission Act 1979* ('the Act').

Clauses 10 and 11 of the Legal Aid NSW Panel Service Agreement ('the Service Agreement') address the grounds and required processes associated with Legal Aid NSW removing Law Practices from panels and deeming Associates ineligible to undertake legal aid work.

There is no internal right of review in relation to any action taken by Legal Aid NSW following a breach of the Service Agreement¹. This includes a decision to remove a Law Practice from a panel and/or deem an Associate ineligible to undertake legal aid work.

Clause 2.4 of the Service Agreement states that the Agreement between Legal Aid NSW and the Law Practice automatically terminates when the Law Practice ceases to be on any panel.

2. Grounds for removal

Law Practices (including sole practitioners and barristers) are appointed to panel/s via a single electronic application in which the Principal of the Law Practice nominates associate/s who are eligible to undertake legal aid work under the nominated panel/s.

Legal Aid NSW may remove a Law Practice as a panel member and/or deem an Associate ineligible to undertake legal aid work.

Legal Aid NSW may remove a Law Practice as a panel member from one or more panels where:

- A. There is **no breach of the Service Agreement**² but one or more of the following circumstances are satisfied:

¹ Clause 11.5 Service Agreement

² Clause 10 Service Agreement

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- the Law Practice requests the removal, unless Legal Aid NSW is satisfied that the Law Practice must remain as a panel member until the conclusion of any existing legal aid work
- the Law Practice no longer exists or is wound up
- the only nominated associate can no longer undertake legal aid work
- there are no eligible associates at the Law Practice to undertake legal aid work;
- the Law Practice or associate fails to comply with Panel conditions, limitations or restrictions imposed by Legal Aid NSW on the Law Practice;
- the Law Practice fails to respond to an audit or breach notice and all reasonable attempts to make contact have been made by Legal Aid NSW.

B. There has been a **breach of the Service Agreement**³

3. Breach of Service Agreement

When the Service Agreement has been breached, the removal process allows Legal Aid NSW to:

- remove a Law Practice from panel/s
- deem an Associate at the Law Practice ineligible to undertake legal aid work⁴

Interim action

Legal Aid NSW may cease to allocate and/or remove existing legal aid work from a Law Practice or direct the Law Practice to remove the work from an Associate while an investigation of a potential breach of the Service Agreement is underway⁵.

Written notice

Where a Law Practice is in breach of any term of the Service Agreement, Legal Aid NSW will send the Principal of the Law Practice written notice⁶ outlining:

³ Clause 11 Service Agreement

⁴ Clause 11.4.5 Service Agreement

⁵ Clause 11.1 Service Agreement

⁶ Clause 11.3 Service Agreement

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- the apparent breach;
- any actions Legal Aid NSW are considering and reasons for the proposed action⁷; and
- the opportunity to provide a response within 14 calendar days of the date of the notice⁸.

Response

Legal Aid NSW will consider the Law Practice’s response to the notice (if any) and decide what action to take.

Where the Law Practice fails to respond to the written notice, Legal Aid NSW will decide what action to take based on the information it has at hand.

Action

The action Legal Aid NSW can take includes⁹:

- provide support and intervention to the Law Practice
- conditions, limitations or restrictions on an Associate
- conditions, limitations or restrictions on a Law Practice
- remove existing work and/or cease to allocate work for a period of time
- deem an Associate ineligible to undertake legal aid work on one or more panels
- removal from the panel/s
- any further action deemed appropriate such as mandatory training
- no action.

A letter setting out the proposed action, the reasons for this decision and the time frame in which it is required, will be sent to the law practice. This will include how the action will be monitored, and if relevant, reviewed.

4. Removal

Where following a breach of the Service Agreement Legal Aid NSW determines to remove a Law Practice from panel/s and/or deem an Associate ineligible to undertake

⁷ Clause 11.3.1 Service Agreement

⁸ Clause 11.3.2 Service Agreement

⁹ Clause 11.4 Service Agreement

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legal aid work, a letter outlining the decision will be sent to the Law Practice which will include which panel/s the Law Practice has been removed from or from which the Associate has been deemed ineligible and the reasons for the removal.

The Law Practice will be given 14 calendar days to respond to the intention to remove or deem an Associate ineligible. Legal Aid NSW will consider the Law Practice's response to the notice (if any) and decide what action to take.

Where the Law Practice fails to respond to the written notice, the decision to remove or deem the Associate ineligible will be confirmed.

A removed Law Practice or Associate deemed ineligible cannot be re-included on any panel for 3 years unless there are special circumstances.

There is no internal right of review against this decision.

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5. Removal process map following breach of the Service Agreement

