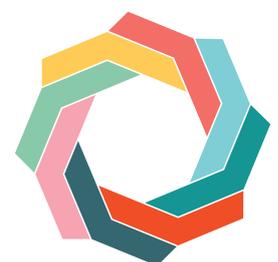


# Response to Law Council of Australia Australian Solicitors' Conduct Rules – Short- term legal assistance services Public Consultation

7 December 2020



Community Legal Centres  
Australia

## Background

CLCs Australia is the national peak for 170 community legal centres.

Community legal centres (CLCs) are not-for profit, community-based organisations that provide essential legal services to hundreds of thousands of people each year, especially those who experience discrimination and disadvantage. Community legal centres across Australia who are imbedded in their local or special interest communities, working in a holistic, client-centred and multidisciplinary way. Community legal centres play a crucial and effective role in assisting people to resolve their legal problems at an early stage, in meeting rising demand for legal assistance and contributing to systemic reform.

The work of community legal centres cuts across a wide range of areas of law and policy including family law, credit/debt, consumer law, family violence, housing, elder abuse, employment and social security.

From 1 July 2019 to 30 June 2020, 142 out of 171 community legal centres provided the following types of services to 194 230 clients:

- 204 093 instances of **legal advice**
- 36 442 **legal tasks** (eg draft a court document or letter)
- 26 647 **duty lawyer services**
- 50 832 **ongoing representation services** (ongoing matters where the community legal centre is the solicitor on the record).

Legal advice, legal tasks and duty law services most likely fall into the category of short-term legal assistance services.

## Introduction

CLCs Australia welcomes the opportunity to provide a response to the Public Consultation for the Australian Solicitors' Conduct Rules – Short-term legal assistance services paper published on 6 November 2020 (**the consultation paper**).

CLCs Australia is pleased that this paper takes up and builds on many of the recommendations that were made in our submission dated 29 June 2018 (when we were more commonly known as the National Association of Community Legal Centres) to the review of the Australian Solicitor Conduct Rules.

We support the adoption of proposed Rule 11A subject to our comments in response to the consultation questions.

# Response to the consultation questions

## 1. Does the proposed Rule adequately address the issues?

The proposed Rule addresses some of the issues that community legal centres encounter when providing legal assistance.

The consultation paper rightly identifies that legal assistance services are in many cases provided on a discrete, limited or one-off basis.

The context in which this occurs is more common than just duty lawyer services. For example, some community legal centres operate high volume telephone advice lines, where performing a conflict check can be a real barrier to providing legal assistance. Where the level of risk to a client is low (if a conflict check is not carried out) then this should be balanced against the potential clients who miss out on advice due to the time taken to screen for potential conflicts. If a person seeking legal assistance does not know the names of all the other parties significant time can be spent trying to determine who the other parties actually are and as a consequence other people waiting in the queue are effectively denied legal assistance through this process. Another example is where a party has a common name which appears in a number of files. In these circumstances, before being able to make a final decision on a conflict check, a senior solicitor is required to review all the relevant files to determine:

1. whether it is possible that it is the same person
2. the confidential information that is held

This can be delayed further occur due to a number of reasons, including:

- older files can be held offsite in secure archives which take time to retrieve
- availability of senior solicitors to consider all the available information to determine the final outcome of the conflict check

To cover these situations we propose that the final line of proposed 11A.1 be amended to read 'a real risk of the client **or other potential clients** being denied access to legal assistance.

### **Case study**

*Consumer Action Law Centre (**Consumer Action**) operates a phone and email advice services where demand for the service exceeds our capacity. For most phone or email enquiries our advice is limited to 15 minutes. Consumer Action was contacted by a client who had received court documents in relation to a car accident. After the accident, the client had contacted a hire car company who he understood would be dealing with the other driver's insurer. He contacted Consumer Action when he received a defence and counterclaim from the insurer for the other driver. The client needed urgent legal advice as he did not realise that legal proceedings had been issued in his name by the hire company purporting to act in his name. The name of the other party was a common name and CALC needed to review 7 matters in order to conduct a comprehensive conflict check. Ultimately Consumer Action assessed that none of these matters were relevant to this enquiry and therefore there was no conflict. The conflict check took approximately 30 minutes to perform. The requirement to conduct a conflict check delayed the client receiving advice, and also used valuable time that could have been used to advise other clients in need of assistance.*

The Rule should also clarify that a legal assistance provider can continue to provide services to a current client even if short-term legal assistance has been provided to another person subsequent to the engagement of the current client in circumstances outlined in proposed 11A.5. Detailed practical guidance should be given on what would be considered 'adequate and timely measures in place to ensure that no disclosure of the confidential information of each client will occur'.

## **2. The difficulties in undertaking systematic conflict checks often arise when a solicitor is providing legal assistance as a duty lawyer service. In what other situations do the same issues arise when providing a legal assistance service?**

Undertaking systematic conflict checks are often challenging for the following additional reasons:

- Providing face to face legal services in an outreach environment where access to databases is restricted: these include when lawyers are working in a remote location or in prisons and some other institutional settings where the solicitor attending is not provided with a list of people who require assistance in civil or family law in advance.
- An online environment such as Justice Connect Answers (JCA) online platform (<https://answers.justiceconnect.org.au/>). JCA provides legal advice in response to discrete questions where secondee lawyers from pro bono firms select questions to answer from a private message board. Currently, to comply with current ethical rules, every single matter in the platform is effectively placed behind its own information barrier. These arrangements make it difficult to identify clients in need of more comprehensive legal assistance as only a compliance officer has access across the information barriers.

## **3. Does the same issue arise in providing legal assistance services other than duty lawyer services?**

See our response to question 2. There are other situations where conducting a full conflict check can be challenging. One example includes Aboriginal and Torres Strait Islander clients cannot name a person who has died for cultural reasons.

## **4. Should the proposed Rule be limited only to duty lawyer services provided by or through a Legal Aid Commission or Community Legal Centre?**

No

**5. Are there any circumstances related to the application of proposed Rule 11A in practice that might be usefully addressed in Commentary to the proposed Rule?**

As mentioned above detailed practical guidance is necessary as to what would be considered under proposed rule 11A.5 to be 'adequate and timely measures in place to ensure that no disclosure of the confidential information of each client will occur' The Commentary should make it clear that the purpose of the new rule is to reduce the barriers to clients being able to access lawyers being able to provide 'short-term legal assistance services' to as many clients as possible