

# 2013 LEGAL AID GUIDE

## BRIEFING OF THE SELECT COMMITTEE ON SECURITY AND CONSTITUTIONAL DEVELOPMENT ON THE RATIFICATION OF THE LEGAL AID GUIDE

October 2013



# Overview of Presentation

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# 1. Legal Aid SA Mandate

## Constitution of RSA

- Section 35(2) “Everyone who is detained, including every sentenced prisoner has the right to –  
(c) to have legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of the right promptly”
- Section 35(3) “Every accused person has a right to a fair trial , which includes the right-  
(g) to have a legal practitioner assigned to the accused person by the state and at state expense , if substantial injustice would otherwise result, and to be informed of this right promptly”
- Section 28(1)(h) “Every child has the right-  
(h) to have a legal practitioner assigned to the child by the state , and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result

## Legal Aid Act ( 22 of 1969)

Section 3 “The objects of the board shall be to render or make available legal aid to indigent persons and to provide legal representation at state expense as contemplated in the Constitution”

Other Legislation also provides for legal assistance at state expense

## 2. Legal Aid Guide Ratification

- **The 2012 Legal Aid Guide came into operation on 23 February 2012 after it was ratified by the National Assembly on 20 September 2011 and by the National Council of Provinces on 24 November 2011.**
- **Section 3A(1)(a) determines that subject to the provisions of the Legal Aid Act and in order to attain its objects and to exercise its powers referred to in section 3 (d) and (dA), the board shall, in consultation with the Minister, include particulars of the scheme under which legal aid is rendered or made available and the procedure for its administration in a guide called the Legal Aid Guide**
- **In terms of section 3A(2), the Board must in addition to the submission of its annual report, submit the Legal Aid Guide which must be tabled by the Minister in the National Assembly and the Senate (Now NCOP) for ratification, and pending such ratification the Legal Aid Guide then in operation shall continue to apply**
- **The proposed amendments sought to the 2013 Legal Aid Guide are indicated in the draft 2013 Legal Aid Guide by vertical lines in the margin and such amendments are summarised in the slides that follow.**

# 3. Amendments sought to the Guide

## 3.1 Criminal cases

- **Children in conflict with the law have been included as a category of persons entitled to legal aid under the Constitution**
- **A child appearing in a child justice court may not be refused legal aid even when the charge is not listed for the District Court**
- **Legal aid is extended to children appearing in a preliminary inquiry as it is regarded as the child's first appearance in court**
- **Where an accused was represented by a Judicare Practitioner and the matter was finalized , the same practitioner will be instructed when the clients elects to appeal the matter at a later stage**

# 3. Amendments sought to the Guide

## 3.2 Civil matters

- **ROE`s discretion to approve legal aid for additional civil matter has been to limited to instances where the matter on a balance of probabilities has a chance of success and the cost of the case justify the benefit to the legal aid applicant**
- **It is proposed that legal representation in maintenance cases be provided where:**
  - (a) there has been a failure by the system on to enable applicant to seek or execute the order for a period longer than 12 months, or**
  - (b) there is an abuse of the system by the other party which makes it difficult to obtain the granting or execution of the order for a period longer than 12 months.**
- **Legal aid for administration of estates involving children has been limited to instances where the estate does not exceed the amount determined by the Minister ( currently R125,000-00 ) in terms of section 18(3) of Administration of Estates Act of 1965 , save where there is an immovable property that exceeds the said amount but is valued at less than R500,000-00.**

# 3. Amendments sought to the legal aid (Cont.)

## 3.2 Civil matters

- **It is proposed that a merit report for civil legal aid should not be required in the following cases :**
  - (a) simple divorces cases**
  - (b) evictions cases, where assistance can be granted to negotiate with the owner to allow the client sometime in the property**
  - (c) uncontested divorces**
  - (d) domestic violence cases to protect the best interest of the child**
  - (d) administration of estates**
- **Judicare Practitioners have been provided with the authority to provide mediation services on behalf of Legal Aid SA clients**

# 3. Amendments sought to the Guide (continued)

## 3.3 Commissions of Inquiry

- **Where Legal Aid SA is mandated and funded by the establishing authority of the commission, legal aid should be provided for the purpose for legal representation of witnesses/persons appearing before a commission of inquiry where the commission has certified that that they have standing before the commission .**
- **Where such funding is not made available and subject to Legal Aid SA being able to allocate resources/funding, then legal aid will only be made available in exceptional circumstances, provided that:**
  - (a) such person/s are indigent and qualify in terms of the means test;**
  - (b) such person/s have been certified by the Commissioner that they have a proper standing before the commission;**
  - (c) there are prospects of hardship to the person/s if assistance is declined;**
  - (d) the nature and significance of the evidence that the person/s is/are giving or appears likely to give;**
  - (e) the extent to which representation is required to enable the inquiry to fulfil its purpose;**
  - (f) whether the interest of a person will be advanced by any other person/association certified to appear before the commission**
  - (g) any other matter related to public interest**



# 3. Amendments sought to the Guide (continued)

## 3.4 Miscellaneous Matters

### Section 204 Witnesses

- Legal aid has been extended to section 204 witnesses as they are warned by the court to provide incriminating evidence against themselves.

### Extradition Proceedings

- The position of providing legal aid in extradition matters has been clarified. Such persons risk the possibility of facing substantial injustice if unrepresented in that such person may lack the ability to place evidence before the court that the alleged charge does not warrant a prosecution in a foreign court.
- Juidcare tariffs as set out in Annexure F will apply where a legal practitioner in private practice is instructed on extradition matters

# 3.5 Supply chain management policy

## 3.5.1 Impact Litigation matters and Cooperation agreements

- **The procurement of legal services via Impact/Co-Operation Agreements has been aligned with Legal Aid SA supply chain management and National treasury requirements (Treasury Practice Note 11 of 2008/2009).**
- **When organisations submit proposals for impact matters/Co-op Agreements the following information must be submitted :**
  - (a) the proponent's name, address , identification or registration number,**
  - (b) identification of any confidential or proprietary data not to be made public,**
  - (c) the proponent`s current SARS tax clearance certificate,**
  - (d) a declaration of interest containing particulars set out in SBD 4 , issued by National Treasury,**
  - (e) a declaration from the proponent that to the effect that the offering of unsolicited proposal was not as a result of any non-public information obtained from officials of the relevant institution or any other institution.**

# 3.5 Supply chain management policy (continued)

## 3.5.2 Judicare Practitioners

- **The allocation of Judicare instructions has been designed in compliance with BBBEE prescripts and to ensure equitable distribution of fee income while remaining competitive and cost effective by means of fixed legal aid tariffs.**
- **The accreditation of Judicare practitioners has been re-visited to ensure alignment to SCM Policies and NT Requirements and ensures that:**
  - (a) practitioners are in good standing with the relevant professional body at the time of registration, and must inform us of any subsequent changes;**
  - (b) practitioners are in possession of a valid tax clearance certificate at the time of registration and must submit updated tax clearance certificates to remain accredited;**
  - (c) any association of advocates not listed must obtain recognition from Legal Aid SA before any member of such association can be accredited;**
  - (d) any misrepresentation is reported to the relevant professional body and results in the removal of practitioner from accreditation list.**

# 3. Amendments sought to the Guide (continued)

## 3.5 Means test

- **The procedure to be followed by the applicant in a criminal matter to appeal against refusal of legal aid where the means test has been exceeded has been clarified and updated**
- **A contribution policy/procedure on partially subsidised legal aid in criminal matters, where an applicant exceeds the means test, has been developed and detailed and is managed by a National Committee**
- **Legal Aid Tariffs in both Criminal and Civil Matters increased by 5,3% from 1/4/2013 in line with average inflation rate**

## 4. Concluding Comments

- **The Legal Aid Guide is essential to the effective and efficient functioning of Legal Aid SA on a sustainable basis.**
- **The Committee is accordingly requested to recommend the 2013 Legal Aid Guide for ratification by the National Assembly/National Council of Provinces as required by Section 3A(2) of the Legal Aid Act 22 of 1969**

# Thank you

