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LEGAL AID GUIDE 2011

SUMMARY OF PROPOSED AMENDMENTS AS APPROVED BY THE BOARD OF LEGAL AID SOUTH AFRICA

1. Introduction

The 2009 Legal Aid Guide was the last Legal Aid Guide to be ratified by Parliament on 11 November 2008 and it was implemented with effect from 10 February 2009.

A detailed schedule indicating the amendments to the 2009 Legal Aid Guide approved by the board of Legal Aid SA is attached to this memorandum for ease of reference. The proposed amendments are indicated in the draft 2011 Legal Aid Guide by vertical lines in the margin.

2. Summary of the Proposed amendments

The most important amendments detailed in the attached schedule can be summarized as follows:

- 2.1 The offence of reckless and negligent driving is being added to the list of offences for which legal aid is available in the district court. (No 6)
- 2.2 Legal Representation before administrative tribunals is excluded, save that legal aid may be available to review the decision of such a tribunal. (No 12)
- 2.3 Restriction on number of civil matters per applicant to discourage litigious applicants. (No 13)

- 2.4 The means test is clarified and amended in various respect and the means test is increased as follows:
- 2.4.1 Net monthly income (after tax) is increased for single applicants from R 5 000 to R 5 500 per month and for households from R 5 500 to R 6 000 per month. (No 17 & 18)
 - 2.4.2 Net permissible asset value is increased from R 75 000 to R 100 000 where there is no immovable property and from R 300 000 to R 500 000 where there is an immovable property. (No 19)
- 2.5 A policy and procedure for partially subsidized legal aid in criminal matters is detailed. (No 20 & 40)
- 2.6 The Regional Operations Executives discretion to approved fully subsidised legal aid where the means test is exceeded is increased from R 2 000pm to R 3 000pm for income and introduces a discretion in respect of net assets of up to R 100 000. (No 23)
- 2.7 A 4th stage has now been included, where a court wants to order the provision of legal aid, to provide for the 3B procedure as clarified by the SCA in the matter of Legal Aid SA v Porritt and Bennett. (No 25)
- 2.8 Justice Centres are delegated the power to approved Judicare and this is extended to include where they lack the capacity to adequately represent the legal aid applicant. (No 30)
- 2.9 The Procedure concerning expert witnesses is clarified and brought into line with procurement procedures. (No 42)
- 2.10 It is proposed that a contractually agreed period of 4 months be implemented for the submission of accounts by Judicare practitioners and 3 months for practitioners to dispute the amount paid, where after a claim will prescribe. This is necessary as it is found that practitioners are submitting accounts late and this impacts on Legal Aid SA's contingent liability/provisions. (No 48, 51 & 52)
- 2.11 The legal aid applicant's and judicare practitioners consent is sought to conduct quality control tests of Judicare practitioner files. (No 55 & 79)
- 2.12 The Legal Aid Tariffs in both criminal and civil matters are clarified in various respects and the tariffs are increased for the effects of inflation by 5% with effect from 1 April 2010 and 4% with effect from 1 April 2011. (No 56 to 66)
- 2.13 The policy and procedure provisions contained in Annexure O are incorporated into the main body of the Legal Aid Guide. (No 71 to 83)

Submitted by

Legal Aid South Africa