LEGAL AID
WESTERN AUSTRALIA

Audit and Compliance Policy

For Legal Aid WA Panel and List Members

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1 Policy Objective

To set out audit and compliance procedures for private practitioners on Legal Aid WA (LAWA) panels and lists.

2 Application

This policy applies to all private practitioners on LAWA panels and lists as published on the LAWA website.

3 Acronyms used in this policy

LAWA	Legal Aid WA
LPD	Legal Practice Development
LEN	Lawyers Engagement Network
PPM	Private Practitioner Manual
PSA	Professional Services Agreement
PSIU	Professional Standards & Integrity Unit

4 Background

LAWA's 2012-2014 strategic planning process identified the need to review the existing private practitioner arrangements, primarily to ensure the ongoing sustainability of the panel.

LAWA conducted a formal review of the panel in 2012. The aim of the review was to create a private practitioner model that would provide a sustainable path for service delivery; promote high professional standards; embody high levels of governance; and have the broad support of the profession.

The review resulted in a number of discrete recommendations around:

- ❑ The nature and number of panels
- ❑ Approval of lawyers, including entry requirements and ongoing training obligations
- ❑ Contract and Practice Standards, including the introduction of service agreements
- ❑ Monitoring quality
- ❑ Complaints
- ❑ Performance Reviews

In 2014, the Legal Practice Development (LPD) Division at LAWA took over responsibility for private practitioner panels and audit. The Professional Standards & Compliance Unit (PSCU) was created within LPD to manage this function. In July 2021, PSCU was renamed to the Professional Standards & Integrity Unit (PSIU) and moved to the Lawyer's Engagement Network (LEN) Division.

New panels and lists were subsequently rolled out between July 2014 and July 2015.

5 Audit process flow chart

WHY do we audit?

- To provide a responsive tool to deal with issues and concerns as they arise
- To ensure compliance
- To maintain quality
- To create efficiencies

WHO do we audit?

SCHEDULED STREAM

- A percentage of the top earners as published in Legal Aid WA's Annual Report
- A percentage of other active firms undertaking grants of legal aid

TARGETED STREAM

Firms/individual practitioners where serious issues and/or concerns have been raised

WHAT & WHEN do we audit?

SCHEDULED STREAM

- Generally aimed at firms
- Checks general compliance with the *Legal Aid Commission Act,* Grants Online, the Professional Services Agreement and the Private Practitioner Manual.
- Follows up firms identified as non-compliant in previous audits.
- Can consist of comprehensive audits over many criteria or routine audits over one or two criteria (eg disbursement receipts, prison visits)
- Usually occur annually (unless high risk compliance issues are identified).

TARGETED STREAM

- Generally aimed at individual practitioners
- Examines issues raised in complaints, transfer requests, from the judiciary, and from other information received by LAWA.
- Often scheduled at short notice.

HOW do we audit?

SCHEDULED STREAM

- Comprehensive audits covering a wide range of criteria
- Routine audits covering one or two specific criteria

PROCESS

- Firm/practitioner provided with prior notice of the files that will be audited
- Comprehensive audits can be on site or files can be sent to LAWA
- Routine audits will require firms/practitioners to forward requested information as required
- If there are no issues a final report will be prepared and sent to the firm/practitioner
- Where issues or concerns are found, the firm/practitioner will be provided with a preliminary report and given a specified time to respond
- LAWA will consider any further information provided and send a final report to the firm/practitioner
- The firm/practitioner can go to Review Committee if a proposed credit note is in dispute

TARGETED STREAM

Responsive audits of firms and individual practitioners where serious issues and/or concerns have been raised

PROCESS

Firm/practitioner asked to respond in the same way as for a scheduled audit but the time frames to respond may be shorter.

Audit OUTCOMES

- Compliant – no further action required
- Compliant with commentary – generally dealt with by education and/or training
- Non-compliant
  - — Request practitioner to engage in training, supervision, mentoring
  - — Seek restitution for overpayments (credit note)
  - — Schedule a further audit to check compliance
  - — LAWA issues letter of concern
  - — Referred to the Legal Aid Commission for consideration to issue a Show Cause Notice and/or refer to the LPB/LPCC
  - — Referred to the Chairman of the Legal Aid Commission for urgent consideration to refer the matter to the LPB/LPCC

6 Why audit?

This policy sets out LAWA's audit and compliance framework for private practitioners undertaking grant of aid work.

To be on a LAWA panel or list, all practitioners are required to sign a Professional Services Agreement (PSA). By signing the PSA, the practitioner agrees to comply with practice and case management standards in the Private Practitioner Manual (PPM).

LAWA uses the Grants Online system for practitioners to submit applications, extensions and claims electronically. A significant amount of information is accepted by LAWA at face value, with the acknowledgement that LAWA can audit a firm or practitioner at any given time.

Compliance with the PSA and the PPM are LAWA's primary focus when auditing and conducting file reviews. A file review may be conducted in relation to:

- ❑ Claims for payments made
- ❑ Compliance with professional conduct and standards as outlined in the PSA and PPM
- ❑ Compliance with the management of the grant including any briefing or supervision requirements
- ❑ Compliance with LAWA's means and merit guidelines

In addition to testing compliance, the auditing process aims to be educative and conducive to working with practitioners. This will include the provision of general and specific online and in-person training as required.

7 Who is audited?

LAWA uses a multi risk-based approach to maximise use of audit resources.

When assessing the overall risk and scheduling audits, LAWA takes into account:

- ❑ Payments made in the last financial year
- ❑ Number of grants issued
- ❑ Whether the firm is newly admitted to the panel
- ❑ Whether the firm has newly admitted panel members
- ❑ Whether the panel member is being supervised
- ❑ Whether the practitioner has had any validated complaints made against them
- ❑ Noticeable trends in transfers of grants to or from the practitioner
- ❑ Date and outcome of previous audits

The above factors are not weighted equally in determining the overall risk. LAWA will exercise professional judgment when scheduling audits and selecting files to review. Payments made to a firm will remain a priority when programming the scheduled audits.

8 Audit Streams

8.1 Scheduled Audit Stream

These audits will usually be of a firm, as opposed to an individual practitioner. They are programmed around the risk profiling of a firm and to check general compliance with GOL, the PSA, the PPM, the Guide and the Guide to Claiming Payment.

Each year scheduled audits will be conducted on a percentage of:

- ❑ Top earners, and
- ❑ Other active firms undertaking grants of aid under the panel arrangements.

The percentage of firms audited each year may vary depending on:

- ❑ Available resources.
- ❑ The number of additional audits scheduled in response to a non-compliant firm.
- ❑ The number of targeted audits required (ordinarily this is in response to a serious complaint or compliance issues, and can take a significant amount of resource time investigating the matter).

8.1.1 Comprehensive audit

A comprehensive audit will cover a range of items designed to investigate the overall cost and conduct of the service provided including:

- ❑ Substantiating the payments made on the file.
- ❑ Identifying any over payments and seeking repayment.
- ❑ Confirming the grant has been managed in accordance with the PSA, the PPM.
- ❑ Confirming the representation is appropriate based on panel membership.

8.1.2 Routine audit

A routine audit is designed to focus on specific issues across many firms and private practitioners. The primary focus will be to substantiate claims, identify any over payments, and confirm the grant has been managed in accordance with the PSA and the PPM.

8.2 Targeted Audit Stream

Targeted audits are often scheduled at short notice.

A targeted audit will involve auditing a specific file or files when an issue or concern is raised in relation to a practitioner as a result of:

- ❑ Complaints
- ❑ Advice from the judiciary
- ❑ Transfer requests
- ❑ Other information received by LAWA

The nature and extent of the file review will be dependent on the nature of the issue raised, and whether it appears to be isolated or an ongoing concern.

9 Who will conduct the audits?

Audits and file reviews are conducted or supervised by the PSIU in the LEN Division of LAWA.

10 When are audits conducted?

Scheduled Audits and File Reviews

- **Top earners**: The program is set following review of the top earners from the previous financial year. These audits take priority and are deemed high risk due to the amount of money received by the firms.
- **Other active firms:** Following the completion of the top earner audits, other active firms are then audited.

Targeted Audits and File Reviews

Targeted audits are conducted as required in response to issues or concerns raised.

11 What will be audited?

LAWA can select any number of files for audit.

For smaller or low risk practitioners and firms, the sampling size will generally be a minimum of 8-10 files.

For medium or medium risk firms, the sampling size will generally be a minimum of 10-15 files.

For larger and higher risk practitioners and firms, the sampling size will generally be a minimum of 15-20 files.

Where LAWA considers it appropriate to sample more or less files than within this range, the reasons for doing so will be recorded.

Most audits will be on grants for criminal and family law matters as this is where the majority of LAWA's commitment budget is allocated.

From time to time civil grants will also be audited. These are considered of lower risk as evidence of the claim is often submitted during the grant.

12 Audit timeframes

12.1 Audits conducted onsite

LAWA will give two weeks' notice of:

- The date of an audit to be conducted at the office of the firm or private practitioner, and
- The details of files that have been selected for audit.

12.2 Audits conducted by correspondence

LAWA will request in writing the information required for each selected file. The firm or private practitioner must provide their response and evidence in support

(i.e. receipts for disbursements) within a set time frame of 7-28 days, depending on the nature of the audit.

13 Further information

LAWA may request further information at any time, or request that the physical file is sent to LAWA for review and further substantiation. LAWA will cover reasonable costs for the delivery and return of files.

14 Audit outcomes

While the types of audits may differ, every outcome will result in either a compliant or non-compliant finding.

14.1 Compliant

Where no issues are identified, the firm or private practitioner will be advised that the files were compliant with no further action.

A file may be deemed compliant but have commentary attached if any issues need to be raised with the practitioner. This will ordinarily be where restitution is not sought, and it is appropriate to provide the practitioner with feedback for future compliance. Where non-compliance has been identified on less than 10% of all claims audited AND restitution is $500 or less, discretion may be applied to deem the firm and/or private practitioner compliant with commentary attached.

14.2 Non-compliant

Where concerns or issues are identified, LAWA will prepare a preliminary report advising the firm or practitioner that the file/s are non-compliant.

The firm or practitioner will be given the opportunity to dispute the findings and provide the required information or substantiation. LAWA will consider the response, if one is provided, and prepare a final report. The firm or practitioner can request that any audit findings in the final report be referred to a LAWA Review Committee.

One or more of the outcomes listed below may issue from the final report:

- ❑ Training, supervision or mentoring
- ❑ Further auditing
- ❑ Restitution for overpayments/overcharging
- ❑ Letter of concern
- ❑ Referral to Legal Aid Commission for a Show Cause Notice to issue to exclude, remove or limit the practitioner from the panel
- ❑ Referral to the Legal Practice Board of Western Australia.

These outcomes are considered in more detail below.

14.2.1 Outcomes matrix

The following Outcomes Matrix should be routinely used by LAWA to assign the appropriate level of 'seriousness' to non-compliant firms or practitioners. Appropriate managerial approval must be obtained if the assigned level of 'seriousness' falls outside the perimeters identified in the matrix. The matrix also sets out the most common actions that may be taken by LAWA and the Commission on the outcome of the audit or compliance concern.

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Outcomes Matrix

AUTHORITY	LAWA				CHAIR-MAN	LEGAL AID COMMISSION			
ACTIONS / SERIOUSNESS	TRAINING	LETTER OF CONCERN	SUPERVISION, MENTORING	UNDERTAKING	REFER TO LSCC	SHOW CAUSE	LIMIT	REMOVE	EXCLUDE
LOW Any one of these: 1. Conduct issue/s. 2. Compliance issue/s. 3. <$5K overpayments. OR Any combination of 1-3 above.	✓	✓	✓	✓					
MEDIUM Any one of these: 1. Conduct issue/s. 2. Compliance issue/s including enduring inability to comply. 3. <$10K overpayments. 4. ≥ 50% non-compliance on audited files. OR Any combination of 1-4 above.	✓	✓	✓	✓	✓	✓	✓	✓	✓
HIGH Any one of these: 1. Conduct issue/s. 2. Compliance issue/s including enduring inability to comply. 3. >$10K overpayments. OR Any combination of 1-3 above. OR 4. <$10K overpayments in combination with conduct and/or compliance issues. OR 5. ≥ 65% non-compliance on a minimum of 20 audited files in combination with conduct and/or compliance issues.					✓	✓	✓	✓	✓

14.2.2 Training, supervision or mentoring

In accordance with Part 5 of the PSA, LAWA may require the practitioner to engage in training, supervision or mentoring. This may be at the practitioners own cost.

14.2.3 Further auditing

The sampling size will be increased where non-compliance is identified on 50% or more files. Generally, this will be in the same audit period, but this will depend on the files that are available to review.

The sampling size may also be increased where less than 50% of files are non-compliant where LAWA forms the view that this is warranted. For example, due to the value of over-charging or the nature of the non-compliance.

14.2.4 Restitution for overpayments/overcharging

Where over payments and/or over charging have been identified and the firm accepts these findings, they will be advised the firm will be required to repay the money to LAWA. This will be by a credit note issuing in favour of LAWA, or the firm being requested to refund the money to LAWA by bank transfer.

If the firm does not accept the finding in relation to the over payment, they will be advised that they can have the matter considered by a LAWA Review Committee. At least two members of the current LAWA Review Committee will be asked to meet and consider the audit findings in relation to the over payment.

14.2.5 Suspension of automatic payments

LAWA may suspend automatic payments to the firm, either during or at the completion of an audit or investigation. The period of suspension will be at LAWA's discretion.

14.2.6 Letter of concern

LAWA may write a formal letter of concern in response to findings of non-compliance. This may also include a request that the practitioner undertake further training, supervision or mentoring.

14.2.7 Referral to Legal Aid Commission

LAWA may refer the matter to the Legal Aid Commission of Western Australia for consideration. LAWA's recommendations to the Commission may include issuing a show cause notice in accordance with section 40(6) of the *Legal Aid Commission Act 1976,* to remove, exclude or limit the practitioner from the panel.

14.2.8 Referral to Legal Services and Complaints Committee

LAWA may, in accordance with section 64(2c) of the *Legal Aid Commission Act 1976*, seek the approval of:

- ❑ The Chair of the Legal Aid Commission of Western Australia; or
- ❑ The Legal Aid Commission of Western Australia Commission itself

to disclose information to the Legal Services and Complaints Committee, being an entity of the Legal Practice Board of Western Australia.

14.2.9 Referral of high seriousness outcomes to the Legal Services and Complaints Committee

Where the Chair of the Legal Aid Commission of Western Australia or the Legal Aid Commission of Western Australia itself accepts LAWA's determination that a matter is of high seriousness as set out in the Audit Outcomes Matrix, the matter will be referred to the LSCC in accordance with section 64 (2c) of the *Legal Aid Commission Act 1976.*

15 Reporting audit outcomes

All audit outcomes will be provided to the Legal Aid Commission of Western Australia on an ongoing basis.

A summary of audit outcomes will be provided to LAWA's Executive Management Team (EMT) as required.

16 References

Legal Aid Commission Act 1976

Legal Aid WA Professional Services Agreement (PSA)

Legal Aid WA Private Practitioner Manual (PPM)

Practitioner's Guide to Claiming Payment

BoM (EMT) reviewed:	15 December 2016
Last Amended:	27 January 2026
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