

## UMSU Legal Service

### Conflict of Interest in Service Delivery Policy

Policy number: 001	Date adopted: 12.11.2014
Authorised by: Phoebe Churches, Manager, Advocacy & Legal	
Date last reviewed: 10.11.2016	Reviewed by: A & L SAG
Date of next review: 10.11.2017	

Policy context: This policy relates to:	
Standards or other external requirements	NALCLC Mandatory Standard 13
UMSU standards	Legal Service Charter UMSU Code of Conduct Information Barrier Policy
Legislation or other requirements	<a href="#"><u>Legal Profession Uniform Law Application Act 2014 (Vic)</u></a> <a href="#"><u>Legal Profession Uniform General Rules 2015</u></a> <a href="#"><u>Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015</u></a> <a href="#"><u>Legal Profession Uniform Legal Practice (Solicitors) Rules 2015</u></a>

#### POLICY STATEMENT

The UMSU Legal Service is obliged to ensure that conflicts of interest do not occur in the course of providing advice and/or casework assistance. The *Legal Profession Uniform Law and Uniform Rules* set out a number of duties and obligations on legal practitioners. These duties extend to all staff, management and volunteers at the UMSU Legal Service.

#### Conflicts of interest – what are the situations we are trying to avoid?

In addressing conflicts of interest, there are six main things we are trying to avoid:

1. Acting for both sides in the one matter;
2. Acting *against* someone who is one of our past clients;
3. Acting *for* someone against whom we have acted in the past while representing one of our clients;
4. Acting in a matter where a previous Legal Service staff member or volunteer is the other party;
5. Acting in a matter where a Legal Service staff member or volunteer has acted for the other party in a previous role or workplace; and
6. Where a staff member or volunteer has an actual or perceived financial, personal or other interest in the matter.

The first four circumstances can be adequately addressed by consulting the Legal Service records as set out below. The fifth and sixth circumstances are far more problematic, and rely on Legal Service staff and volunteers informing the Principal Solicitor or Manager, Advocacy & Legal *as soon as they become aware that a conflict of those types has potentially or actually arisen.*

#### Circumstances where a conflict of interest will always exist

- A client will always be referred to another service if the other party is a current or past student of Melbourne University. The UMSU Legal Service cannot provide advice to either party where a matter is between two students of Melbourne University. If either student seeks advice, a referral to an alternative legal service **MUST** occur.
- A client will always be referred to another service if the other party is a current or past UMSU staff member. The UMSU Legal Service cannot provide advice to students of Melbourne

University where the other party is a current or former staff member of UMSU. If a student seeks such advice, a referral to an alternative legal service **MUST** occur.

### **What are the consequences of not doing proper conflict checks?**

There are potentially three main classes of serious consequences:

1. For the existing client: The personal information of this client may be compromised, leading to anything from embarrassment to significant loss and damage or risk. At worst, the personal safety of the client may be compromised.
2. For the new client: As for the existing client.
3. For UMSU Legal Service and the Principal Solicitor: As a matter of law, the Principal Solicitor has *personal liability* to clients. In other words, if a client believes we have been negligent in our provision of legal services, it is the Principal who will be potentially sued.

We maintain a Professional Indemnity Insurance (PII) policy. However, if we do not maintain a strict practice of following adequate conflict of interest procedures, there is a strong possibility that in the event of a claim we would compromise or lose our insurance cover.

### **WHAT ARE OUR POLICIES?**

#### **General Comments**

1. This policy applies to giving advice and/or casework assistance. It does not require a staff member or a volunteer to conflict check when only providing information and/or referral.
2. Where there is any doubt about the existence of a conflict of interest **the matter should be immediately referred to the Principal Solicitor or the Manager, Advocacy & Legal.**
3. In particular, where there is **a perception or allegation** of conflict of interest, the staff member or volunteers should immediately seek advice from the Principal Solicitor or Manager, Advocacy & Legal. If this is not possible, the staff member or volunteer should either:
  - a. Defer giving any advice until consultation with the Principal Solicitor or Manager, Advocacy & Legal; or
  - b. Provide the person with appropriate referrals.

And, in either event, inform the Principal Solicitor or Manager, Advocacy and Legal as soon as possible.

4. If the Manager, Advocacy & Legal is in doubt about a conflict of interest, the Manager should consult the Principal Solicitor. If the Principal Solicitor is in doubt about a conflict of interest advice should be sought from the Law Institute of Victoria, Legal Services Board or PII representative.
5. **If advice has been given prior to discovering that a conflict of interest exists**, the Principal Solicitor or Manager, Advocacy & Legal should be advised as soon as practicably possible to decide on the necessary actions to be taken. One consequence is that the Legal Service will be unable to provide further advice or act for either client, and **both clients must be referred out.**
6. If the solicitor has seen the other party at another legal service or firm, then the party attending should be referred to another legal service.

#### **Detailed Procedures**

7. In relation to **all** new matters (regardless of whether the student is an existing client or a new client), details of the student and the other party must be obtained and entered into the Legal Service's client database and conflict checked during the first contact with the Legal Service and before advice is given.
  - a. If the student refuses to provide their name, the Legal Service cannot provide any legal advice and can only provide information and/or referral.
  - b. If the student is unwilling to provide the name of the other party, the Legal Service cannot provide any legal advice and can only provide information and/or referral.

- c. If the student is unable to provide the name of the other party, the Legal Service will ask the client to attempt to find out the name (if this is reasonable in the circumstances) and assist them to do so, prior to providing any legal advice.

The name of the student seeking assistance **MUST** be checked against *other parties* in the SueMe database. This check must be conducted even where the student has a complaint against an institution such as a bank, insurance company or the police and the Legal Service would not usually expect a conflict of interest to arise. Conflict checks must still be carried out to ensure the student is not the other party to another dispute so that a conflict of interest might arise.

- 2. The completion of a conflict check is recorded on the advice memo and/or open file in addition to being recorded in SueMe.
- 3. **Where a conflict of interest exists, the student should be informed that the Legal Service is unable to provide advice to them and they should be referred to another appropriate legal service.** Care must be taken to observe our duty of confidentiality in this situation.

### Training

This policy and the procedures for implementing it will be addressed in staff, volunteer and management induction and in relevant internal manuals.

### DOCUMENTATION

Documents related to this policy	
Related policies	Volunteer Induction Policy UMSU Code of Conduct
Forms or other organisational documents	Conflict Check in SUEME (database)
Policy review frequency: Annually	Responsibility for review: A & L SAG
Review process: The Advocacy & Legal Student Advisory Group in conjunction with the Principal Solicitor has responsibility for leading the review of this policy. The process for reviewing the policy includes: <ul style="list-style-type: none"> <li>• Assessment of policy implementation to date;</li> <li>• Those covered by the policy are provided with the opportunity to give feedback;</li> <li>• All feedback and suggestions will be considered by the review of the policy;</li> <li>• Proposed changes will be presented to UMSU staff to achieve consensus;</li> <li>• A &amp; L SAG will endorse the finalised policy; and</li> <li>• The policy will be available on the Legal Services web page.</li> </ul>	