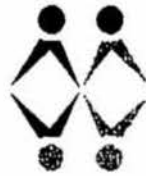


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Legal Aid  
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18 March 2010

The Director-General  
Department of Justice and Constitutional Development  
Private Bag X81  
PRETORIA  
0001

Dear Ms Msomi

**LEGAL AID SA 2010/11 BUDGET & EFFECT OF OSD FUNDING**

1. Government introduced an Occupational Specific Dispensation (OSD) for legal professionals effective from July 2007. The Minister of Justice and Constitutional Development has since extended the OSD to Legal Aid South Africa.
2. The OSD implementation was intended to be implemented in two phases with funding provided by the Department of Justice and Constitutional Development (DoJ & CD). Legal Aid SA has implemented OSD phase 1 in full after the DG of DoJ & CD made a written commitment to provide for the OSD funding and thus effect MTEF budget baseline adjustments for Legal Aid SA. Contrary to a commitment made, OSD phase 1 is being funded from DoJ & CD budget savings and Legal Aid SA's MTEF allocations continue to show a budget shortfall.
3. In January 2010 a joint meeting of DoJ, NPA and Legal Aid SA delegations met to resolve the outstanding funding shortfall on OSD phase 1 and implementation of OSD phase 2. Subsequent to the meeting the 25 January DoJ ManExco considered the agreed position by the joint meeting. The DDG Corporate Services of DoJ, Mr Vuso Shabalala, later confirmed that the DoJ Exco had endorsed the adjustments as agreed in the joint meeting of January.

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4. The funding shortfall is as follows:

OSD area	2009/10	2010/11 and MTEF
OSD phase 1		R23,8 million
OSD phase 2	R42 Million (including back payments from July 2007)	R30 million
TOTAL		<b>R53.8 million</b>

5. Legal Aid SA has since received a letter from National Treasury confirming approval to transfer an amount of R42 Million from DoJ& CD budget 2009/10 to Legal Aid SA. This amount is not yet received by Legal Aid SA. The DoJ&CD or National Treasury did not advise any further on the 2010/11 budget & MTEF baseline adjustments.
6. On Wednesday, 10 March 2010, in response to Legal Aid SA's request a copy of the OSD letter of DoJ to National Treasury (sent to NT in February 2010) was received. Contrary to confirmed reports by DoJ&CD, the Department did not recommend a budget baseline adjustment for MTEF 2010/13 for Legal Aid SA.
7. This situation will result in a budget deficit for Legal Aid SA in its 2010/11 MTEF cycle.
8. It should be noted that if Legal Aid SA pays the OSD Phase 2 funds in the 2009/10 financial year, it will be committing to payment of OSD Phase 2 salary adjustments for subsequent years. However if the DoJ&CD does not commit to an adjusted baseline Legal Aid SA will in effect be budgeting for a deficit. In terms of the Section 53(3) of the PFMA – "*A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.*"
9. Legal Aid SA is therefore unable to begin paying the OSD Phase 2 salary adjustments for 2009/10 and previous financial years until the future funding for it has been secured.
10. Of the total R53,8million shortfall for 2010/11, R23,8million shortfall is for OSD Phase I.
11. It is noted that despite the DoJ&CD committing to funding for OSD Phase I, in 2009/10 and now in 2010/11 Legal Aid SA faces a shortfall because an adjustment to the MTEF baseline has not been effected. Legal Aid SA cannot further

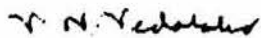
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exacerbate this by paying the first installment of OSD Phase 2 to staff and adding to the budget deficit.

12. Your office is requested to confirm allocations of OSD shortfall funding to the amount of R53,8million in the 2010/11 budget allocation, and that such amounts will be added to the MTEF budget baseline going forward.
13. You are advised that in case DoJ & CD is unable to respond and confirm the budget and MTEF allocations in writing,
  - 13.1. Legal Aid SA will not be able to pay OSD phase 2 by end March 2010 as intended;
  - 13.2. When we receive the R42 million, we shall retain it (OSD Phase 2 for 2009/10 and back pay) pending National Treasury approval as a rollover to 2010/11;
  - 13.3. We will only effect the OSD phase 2 adjustment and payments once the DoJ&CD and National Treasury have, in writing, approved the adjustment to budget & MTEF 2010/11 going forward.

Your urgent response to this matter will be appreciated.

Regards



Ms Vidhu Vedalankar  
Chief Executive Officer