

Chapter 1

Principles for Granting Legal Aid

Part 1

Introduction

The provision of legal services by the Northern Territory Legal Aid Commission (the Commission) is governed by the Legal Aid Act 1990(NT) and by Agreement between the Commonwealth of Australia and the Northern Territory of Australia for the provision of legal services.

The Northern Territory Legal Aid Commission is an independent statutory body and is not a department or agency of either the Territory or Commonwealth Government. In fact, the relevant legislation specifically provides for the Commission's ability to help disadvantaged persons in cases where they are or may find themselves in dispute with, or opposed to, either Government or a public authority.

The Commission's Charter is to ensure that the protection or assertion of the legal rights and interests of the people of the Northern Territory are not prejudiced by an inability to:

- (a) obtain access to independent legal advice;
- (b) afford the financial cost of appropriate legal representation;
- (c) obtain access to the Federal or Territory legal systems; or
- (d) obtain adequate information about access to the law and legal systems.

Both the Commission and the Commonwealth have issued guidelines in accordance with which legal assistance services are to be provided by the Commission. The Guidelines are a set of principles or rules for granting legal assistance, determining the priorities for the provision of legal assistance and the allocation of that assistance between in-house officers and private legal practitioners. The Guidelines seek to define certain priorities between (a) classes of persons, (b) classes of matter and (c) how those priorities can be achieved.

The legal services provided by the Commission may take the form of legal advice or help from one of its duty lawyers at the Local or Youth Justice Courts or other legal assistance which may be provided in accordance with these guidelines.

There is normally no charge for legal advice or duty lawyer services and no means test is prescribed for these services. However, in special circumstances a contribution may be sought.

The Commonwealth Agreement provides specific guidelines for the funding of legal assistance for matters arising under Commonwealth law and being matters of priority to the Commonwealth.

1. Legal Advice

Commission lawyers will give advice on legal matters free of charge.

Advice will be given at the Commission offices, certain Court houses, prisons and other locations during such times as the Director determines having regard to the availability of staff.

Unless special circumstances exist legal advice will not be available for persons who are seeking advice on a matter for which they have previously been refused assistance.

Where in the opinion of the Director, a person has during their past attendance at advice sessions behaved in an offensive or abusive manner toward staff members or repeatedly sought assistance in respect of matters lacking merit, the Director may decline to provide that person with advice.

Normally a person will be limited to 2 advice sessions for each matter.

2. Duty Lawyer Services

The Legal Aid Commission provides duty lawyer services either by using its own staff or by funding lawyers in private practice, to such sittings of the Local and Youth Justice Courts in the Territory as the Director considers appropriate and to the Family and Federal Circuit Courts.

In criminal matters duty lawyers are available to advise accused persons, and if necessary, appear for them in bail, extradition matters and adjournment applications and in appropriate cases to represent them on a guilty plea. Duty lawyers do not appear in defended cases unless the circumstances are exceptional.

In cases of particular hardship or urgency duty lawyers may also provide rudimentary assistance to persons involved in certain types of civil cases.

The Commission also provides a Domestic Violence Legal Service providing duty lawyer services to the victims, and those at risk, of domestic violence.

Children are also subject to the means test unless there are particular circumstances.

Legal assistance, other than the provision of legal advice, duty lawyer services or assistance to children/ youths, is hereinafter referred to as "legal assistance".

An application for legal assistance should be made in accordance with the form approved by the Commission and should include such information and attached documentation as is required by that form.

Legal assistance may be provided if

- (i) the person is in need of that legal assistance by reason that she or he is unable to afford the cost of obtaining from private legal practitioners the legal services in respect of which legal assistance is sought; and
- (ii) it is reasonable in all the circumstances to provide the legal assistance.

The assistance may be provided free or on condition that the assisted person pays part or all of the cost of providing legal assistance.

Thus the Commission must apply three tests to any application for legal assistance; a means test, a guidelines test and a "reasonableness" or merits test.

4.1 Means Test

The applicant for assistance must first satisfy the means test criteria set out in these guidelines in order to be considered an appropriate candidate for legal assistance. The appropriate contribution to be paid by the applicant is also assessed using the means test.

4.2 Guidelines and Priorities Test

The matter for which legal assistance is requested must be a matter which falls within the guidelines and priorities.

Legal assistance will not normally be provided in **criminal matters** where, in the opinion of the Director, there is absolutely no defence available. Criminal

assistance is generally only provided where there is a likelihood of a penalty of imprisonment.

Assistance will be considered in **criminal appeal matters** where there are reasonable prospects of success provided the cost of conducting the appeal is, in the opinion of the Director, justifiable in terms of the funds available to the Commission for the provision of legal assistance.

In **civil matters**, the matter must be within the category of matters outlined in the guidelines and the cost of the matter must not outweigh the benefits.

In **family matters** the matter must fall within the category of matters outlined in the guidelines. The matter for which assistance is requested must be a matter which falls within the guidelines and priorities.

4.3 Merits Test

To satisfy the merits test the applicant for assistance must meet each of the following tests:

- the case must have reasonable prospects of success;
- prudent self funding litigant funds^{*}
- appropriateness of spending limited public legal aid funds[†]

^{*} These merit tests are also applied in Commonwealth law matters

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