

Chapter 11

Conditions of Referral to Private Legal Practitioners

Part 1

Introduction

"Practitioner" in these General Conditions of Referral means "a private legal practitioner" as defined in sub-section 4(1) of the *Legal Aid Act* and whose name appears on the list maintained by the Commission pursuant to sub-section 30(1).

The arrangements entered into between the Commission and the practitioner constitute a binding and enforceable contract between them on the basis that in consideration of the approval of a grant of aid by the Commission the practitioner will undertake the work in accordance with the terms and conditions of the grant to the best of his/her ability and at the highest professional standards and upon completion the Commission will pay the amount approved.

1. Acceptance of Referrals

- 1.1 Should a practitioner not be prepared to accept any assignment she/he must notify her/his refusal in writing within 14 days of the notification of grant of assistance. If a practitioner does not so notify her/his refusal to accept the assignment she/he is deemed to have accepted it and to be bound by all the conditions of the grant of assistance unless otherwise agreed. In special circumstances an extension of time may be permitted.
- 1.2 The Commission reserves the right to amend the Guidelines and Terms and Conditions of Referral to private legal practitioners and the Scales of Costs at any time and will advise the Northern Territory Bar Association and the Law Society of the Northern Territory of such amendments.
- 1.3 The Commission reserves the right to fix individual terms and conditions where such are appropriate to any individual matter assigned.
- 1.4 It is expected that when assistance is granted an applicant will accept the advice of the solicitor or counsel to whom she or he is assigned. Practitioners are required to report any significant failure to accept such advice where in her/ his legal judgment client's interest or the conduct of the case is thereby prejudiced.
- 1.5 Practitioners are required to advise the client to advise the Commission of any circumstances which come to their notice relevant to the continuance of aid and, in particular, any alteration to an assisted person's financial circumstances. Practitioners should note that where a person is reassessed and found to be ineligible, any work done, after the client's change in circumstances, and not yet invoiced may not be paid where the practitioner was aware of the client's changed circumstances.
- 1.6 Without derogating from the general application of these terms and conditions to all private legal practitioners, including barristers, the following conditions apply in matters accepted by counsel on assignment:

- (a) No counsel shall purport to charge any fee except that approved by the Commission.
 - (b) It shall be the duty of counsel in a legally assisted matter to ascertain the terms and conditions approved by the Commission.
- 1.7 Where a private legal practitioner performs or has performed legal services on behalf of a legally assisted person she or he shall not demand, take or accept payment for performing the services in respect of which the legally assisted person is receiving or has received legal assistance under the Act, other than the payment or payments to which she or he is entitled under the Act.
- 1.8 These terms and conditions shall apply to all partners of the firm (if any) of which the practitioner on the list is a member.

2. Reporting Obligations and Submitting a Claim to the Commission

- 2.1 Pursuant to section 30 of the *Legal Aid Act (NT)* the Director may in such classes of cases as the Commission determines refer to a Legal Aid Committee accounts from practitioners in respect of fees, disbursements or out of pocket expenses in connection with the provision of legal assistance for the purpose of determining whether the amounts claimed are properly payable.
- 2.2 Practitioners are required to advise the Commission of any relevant developments in the conduct of the matter which would increase the anticipated costs above those stipulated in the certificate granting aid. Failure to notify may result in the Commission's declining to accept liability for such increase in costs.
- 2.3 All invoices submitted to the Commission must be accompanied by a brief progress report on the matter.
- 2.4 On completion of a matter practitioners shall forward a report containing the following information, especially including full details of all monies recovered or to be recovered:
- (a) the result of the action, including details of orders made;
 - (b) particulars of any orders for costs;

- (c) without limiting the discretion of the Director in an appropriate case to call for an itemised bill of costs, an account in narrative form, sufficient to enable an officer of the Commission to determine whether the fee sought by the practitioner is properly payable, will be accepted by the Commission provided the account is certified by a principal of the firm as relating only to work covered by the legal aid certificate;
- (d) subject to the provisions of the Act, vouchers in support of all disbursements of a large or unusual nature are to be supplied.

No accounts forwarded in a form or without supporting material prescribed hereby will be assessed or paid.

- 2.5 If so required by the Commission a practitioner shall produce to the Commission the file or files relating to the matter in respect of which assistance was granted.
- 2.6 In the event that the Commission considers that the practitioner requires further training in a particular area of the law, the Commission will not approve any future grant of aid to that practitioner until she or he has undertaken such training to the satisfaction of the Commission.
- 2.7 In connection with any application for assistance, assigned matter or account a practitioner shall provide all information and give such assistance as the Commission may require from time to time.
- 2.8 No private legal practitioner shall make a claim for any disbursement or fee for the payment of which she or he could have obtained an exemption by virtue of the fact that the client was legally aided.

3. Limits on Liability of the Commission

- 3.1 The Commission will not accept liability to pay any fee charged in respect of any or all of the following:
 - (a) assisting an applicant to complete an application form as required by the Commission;
 - (b) interviews, letters and communications with the client and/or the Commission for the purpose of an application for legal assistance or concerning the grant or refusal of an application for assistance; or

- (c) preparation of and work done in connection with any itemised bill which it requires.

Provided that a Legal Aid Committee or the Director may in its or her/his discretion determine that the applicant or the Commission shall pay a fee to a practitioner in respect of providing any legal opinion it may require from a practitioner in order to determine the legal merits of an application.

- 3.2 (a) No counsel may be briefed in any matter without the approval of the Commission in writing.
- (b) If such approval is given counsel shall not be briefed except upon the terms notified to the solicitor by the Commission.
- (c) It is the responsibility of a solicitor to notify counsel of the terms of such approval.
- (d) It will be the responsibility of the solicitor to pay counsel her or his fee.

- 3.3 Section 30(9) of the *Legal Aid Act (NT)* provides that the fees to be paid to private legal practitioners for the performance of services on behalf of assisted persons shall be less than the ordinary professional cost of those services.

Where possible the Commission will offer to a private practitioner lump sum fees fixed by the Commission for the performance of particular services on behalf of an assisted person.

In the absence of a "lump sum" agreement or any other specific agreement as to the fees to be paid to the practitioner, the Commission will normally pay 80% of the fees ordinarily payable in respect of similar services provided to a person who is not an assisted person.

- 4.1 Except upon the bases set out in Chapter 8 the Commission will not accept responsibility for the payment of costs awarded against the applicant.
- 4.2 (a) Attention is drawn to section 29 of the *Legal Aid Act 1990*, pursuant to which the Commission may grant legal assistance subject to a condition that the applicant pays to the Commission either:
- (i) the full amount or a contribution towards the costs of the Commission providing assistance; or
 - (ii) a payment to the Commission in respect of any out-of-pocket expenses incurred in providing the assistance.
- (b) In the event that an applicant is ordered to pay any amount by way of contribution the Commission hereby appoints the private practitioner to whom a matter is assigned as its duly authorised agent(s) to receive such contribution on its behalf and to account in such manner as the Commission, from time to time.
- (c) Should any funds whatsoever be received by a private practitioner on behalf of any applicant such practitioner shall not disburse such funds without retaining out of the said funds an amount equal to the whole of the costs which would be ordinarily payable in respect of similar services provided to a person who is not an assisted person.
- (d) Such funds so retained shall not be dealt with in any way until the amount of the client's contribution has been determined by the Commission and advised to such practitioner.
- (e) In this connection the private practitioner is required to receive the proceeds of any judgment, order or settlement and hold an amount sufficient to cover the full contribution and out of pocket expenses.
- (f) The Commission may by notice in writing direct a legally assisted person or a private legal practitioner acting for such person to pay to the Commission the whole or such part as is determined by the Commission and specified in the notice of any money recovered by or on behalf of the person in any proceedings in respect of which legal assistance was granted to the person.

- 4.3 This grant may be varied at any time so as to terminate the provision of legal assistance; alter the nature or extent of the legal assistance; require the applicant to pay a contribution or an increased contribution to the Commission; or to pay any out-of-pocket expenses incurred by the Commission.
- 4.4 No agreement shall be entered into with any party which would limit an applicant's right to recover costs without the consent of the Commission first having been obtained.

5. Limitations on Grants

- 5.1 Subject to the Director's discretion, assistance is granted only to cover the matter or the proceedings specified in each letter of assignment and will not be retrospective. If the client requires a grant of aid extended to cover other matters or proceedings the approval of the Commission must first be obtained in writing.
- 5.2 The Commission will not generally approve invoices for work performed by practitioners where prior approval has not been obtained from the Commission. Practitioners should therefore monitor the amount of commitment available on a file and ensure appropriate approvals are sought before work is performed.
- 5.3 Practitioners are expressly directed not to purport to act in a matter on the basis that assistance is terminated or continued by any person or body other than the Commission and by notice in writing.

6. Termination and Transfers of Grant of Assistance

- 6.1 The Commission may terminate a grant of legal assistance in the following circumstances:
- 6.1.1 Where a client unreasonably refuses to accept the advice of the allocated practitioner;
 - 6.1.2 Where a client is abusive to Commission staff or the allocated practitioner;
 - 6.1.3 Where a client is no longer eligible for a grant of legal assistance;
 - 6.1.4 Where a client or practitioner fails to comply with these guidelines. (If aid is terminated due to a practitioner's failure to comply with the guidelines a further grant will be considered for the client.)
- 6.2 No grant of aid to a client may be terminated or transferred by the client or by the private legal practitioner to whom it is assigned without the consent of the Commission being obtained and the grant may only be terminated or transferred on such conditions as the Commission determines.
- 6.3
- (a) Where the services of a private legal practitioner or of an officer of the Commission have been made available to a legally assisted person, and that person has notified the Director that she or he wishes to have her or his grant of aid transferred to another private legal practitioner or to an officer of the Commission, the Director shall only transfer the grant where it is appropriate in the circumstances to do so and no additional expense to the Commission is incurred as a result.
 - (b) The Director or a Legal Aid Committee may transfer a grant of aid to a private legal practitioner or an officer of the Commission if, in the opinion of the Director or of the Committee, it is reasonable in all the circumstances to do so and may require the legally assisted person, as a condition of the transfer, to pay to the Commission a contribution or further contribution of a specified amount towards the costs of the Commission occasioned by the transfer.
 - (c) A legally assisted person will not normally be entitled to have their grant of aid transferred to another private legal practitioner on more than one occasion.

Part 3

Section 30 Statement

Firm ID

*For NTLAC office
use*

ACCEPTANCE BY A PRIVATE LEGAL PRACTITIONER

OF GENERAL CONDITIONS OF REFERRAL IN ACCORDANCE WITH
SECTION 30 OF THE *LEGAL AID ACT* 1990 (NT)

**** I / WE WILL ACCEPT REFERRALS IN THE FOLLOWING CLASSES OF MATTERS OR IN THE PARTICULAR COURTS. (Place a tick against the relevant item/s).**

1. ALL REFERRALS REGARDLESS OF CLASS OR COURT
2. LITIGATION - PERSONAL INJURIES
3. CRIMINAL LAW
4. FAMILY LAW
5. CARE & PROTECTION
6. DOMESTIC VIOLENCE
7. LITIGATION - OTHER. (specify) _____

I

(Print name in full)

of

(Firm/Chambers)

Hereby agree that in consideration of a grant of aid and referral of a matter by the Northern Territory Legal Aid Commission, I will undertake the referral to the best of my ability. I accept the Terms and Conditions of the Agreement under Section 30 of the *Legal Aid Act* approved by the said Commission on 19 December 2019 and all Scales of Costs offered by the Commission. I undertake to be bound by such Conditions, Scales of Costs and Guidelines in every particular and as amended by the Commission from time to time.

****Directors of an incorporated legal practice assume responsibility for all employees in ensuring compliance with the obligations under this Agreement.**

Agreement under Section 30 of the *Legal Aid Act*

Firm ID:

Practitioner ID:

For NTLAC office use

This Agreement is made on _____ day of _____ 20____

I, _____ (“the Practitioner”)

of _____ (“Firm”)

1. Appointment to General Panel

1. It is agreed that–

1.1 the Commission will consider the appointment of the Practitioner to the Commission’s General Panel;

1.2 if appointed, a Practitioner will receive written notification of their appointment and the Commission will retain the Practitioner on the General Panel for the term of the Agreement;

1.3 a Practitioner who receives written notice from the Director of the Commission or their delegate of their intention to refuse the Practitioner inclusion on the General Panel or removing the Practitioner from the General Panel or limiting the classes of matter for which the Practitioner may provide services may, within one month of receiving the notice, provide reasons in writing to the Commission in relation to the intention to refuse, remove or limit the Practitioner for the Commission to consider;

1.4 a Practitioner is appointed as an independent contractor to the Commission and not as an agent or employee;

1.5 a Practitioner is considered a ‘contract service provider’ within the scope of the *Information Act 2017 (NT)*. As the Commission is a Public Sector Organisation pursuant to section 5 of the *Information Act*, the Practitioner will also be subject to the provisions of that legislation;

1.6 the Practitioner will ensure that matters referred from the Commission will constitute no more than 80% of the Practitioner’s practice;

1.7 this Agreement operates for a term of three years from the date of the Agreement unless the Practitioner is removed from the General Panel earlier;

1.8 the Agreement may be extended for such period or periods as may be agreed between the Practitioner and the Commission;

1.9 the Practitioner will on becoming aware of bankruptcy proceedings, disciplinary proceedings (under the *Legal Profession Act 2006 (NT)* or otherwise) or criminal proceedings (other than minor traffic offences) commenced against the Practitioner, notify the Commission within 10 business days, in writing;

1.10 the Practitioner gives consent to the Commission to seek and obtain information from any other Legal Aid Commission in Australia in relation to any matter pertaining to

decisions to appoint, retain or remove them from the legal aid panel in that jurisdiction;

- 1.11 the Practitioner must inform the Commission of any current or past disciplinary proceedings commenced in the Northern Territory or other jurisdictions and / or any conditions imposed on their current or previous practising certificates;
- 1.12 the Practitioner may be removed from the General Panel:
 - a) on breach of this Agreement by the Practitioner;
 - b) on breach by the Practitioner of the Commission's Guidelines including but not limited to the Conditions of Referral to Private Practitioners; or
 - c) on the commencement of bankruptcy proceedings, disciplinary proceedings (under the *Legal Profession Act 2006 (NT)* or otherwise) or criminal proceedings (other than minor traffic offences) against the Practitioner;
- 1.13 on receiving a request by a Practitioner, in writing, to remove his or her name from the General Panel, the Director of the Commission will remove the Practitioner's name from the General Panel.

2 Practitioner's general obligations

2. It is agreed that the Practitioner–
 - 2.1 will conduct matters in which legal assistance has been granted to the standard of care and skill expected of a person who regularly acts in the capacity in which the Practitioner is engaged and who possesses the knowledge, skill and experience of a person qualified to act in that capacity;
 - 2.2 will familiarise themselves and comply with the *Legal Profession Act 2006 (NT)*, *Legal Aid Act 1990 (NT)*, *Information Act 2017 (NT)*, the Commission's Guidelines, the Northern Territory Law Society's Rules of Professional Conduct and Practice, if applicable, the Northern Territory Barristers' Conduct Rules and the Best Practice Guidelines for lawyers doing family law work prepared by the Family Law Council and Family Law Section of the Law Council of Australia;
 - 2.3 will provide legal assistance only for the matter or matters specified in the grant letter and if assistance is required for other matters, written approval must be obtained from the Commission;
 - 2.4 will inform the Commission of any circumstances which the Practitioner becomes aware of which may be relevant to the continuation of the grant of legal assistance, including any change in the assisted person's financial or domestic situation;
 - 2.5 will, on the reassignment of a matter to another practitioner by the Commission, transfer all relevant files to that legal practitioner as soon as practicable;
 - 2.6 will, if reasonably requested to do so –
 - (a) provide the Commission as soon as practicable with any information which is relevant to the grant of legal assistance, the services provided to the assisted person, and the costs charged or to be charged for them; and

(b) deliver to the Commission the file or files relating to the matter for which legal assistance was provided.

- 2.7 will advise the Commission, in writing, within 14 days of any change to the Practitioner's e-mail address, business address or other contact details;
- 2.8 will permit the Commission to carry out surveys of clients for whom it has performed legal aid work and must provide the Commission with such information as the Commission may reasonably require for such.

3 Costs and money in trust

- 3. In matters where it is a condition of the grant of aid that the client reimburse the Commission's costs, the Practitioner will–
 - 3.1 promptly seek authorisation from the client to retain amounts due to the Commission for the purposes of reimbursing the Commission in the approved form and provide a copy of such authorisation to the Commission;
 - 3.2 take all reasonable action to recover costs ordered in favour of the assisted person;
 - 3.3 not do anything, take any action, give any advice, or enter into any agreement without the Commission's written approval that could prejudice –
 - (a) the Commission's right to recover its costs by way of contribution.
 - (b) the assisted person's right to recover costs.
 - 3.4 notify the Commission immediately when any money is received on the assisted person's behalf and to hold in trust and then disburse the money according to the Commission's instructions.

4 Professional Fees

- 4. It is agreed that the Practitioner–
 - 4.1 will claim payments for legal aid work only in accordance with the approved grant of aid;
 - 4.2 will lodge a claim for legal aid work performed within three months from the end of relevant proceedings and/or finalisation of the relevant matter;
 - 4.3 will within 10 business days refund to the Commission any overpayment received by the Practitioner from the Commission;
 - 4.4 must not, without the authorisation of the Commission, claim, or seek to claim, any payment from any legally assisted person, in respect of any legal aid matter save for initial financial contributions imposed by the Commission as a condition of a grant of legal assistance and save and except for where the grant is for disbursement only funding;
 - 4.5 must not, without the authorisation of the Commission, enter into a private costs agreement with a legally assisted person, in respect of any legal aid work. If a Practitioner and the legally assisted person want to enter into a private costs agreement, then the Practitioner must first notify the Commission and, with the consent of the legally assisted person, obtain written termination of the relevant grant of legal assistance that is relevant to the legal aid work being performed;

- 4.6 will not bill the Commission for the following services:
- Completing an application for legal aid;
 - Filing an application for legal aid;
 - Preparing a letter of merit;
 - Submitting a letter of merit;
 - Correspondence with the Commission in relation to the grant ; and
 - Preparation of any accounts.
- 4.7 will on completion of the legal aid referral send the Commission within three (3) months:
- (a) a report on the outcome of the matter, including details of any order for costs;
 - (b) an account, in accordance with the approved grants, and if requested an itemised bill in taxable form for fees and disbursements; and
 - (c) an account for all moneys received and paid on behalf of the assisted person during the legal aid referral.

5 Practising certificate and insurance

- 5.1 The Practitioner will maintain their practising certificate and will immediately notify the Commission if it is not maintained and, in that event, will cease working on any case in which legal assistance has been granted.
- 5.2 The Practitioner will maintain all necessary professional indemnity insurance and provide evidence thereof if requested by the Commission.

6 Professional skills and training

- 6.1 The Practitioner will keep up-to-date with changes in the law in their nominated areas of practice.
- 6.2 The Commission may, as a condition of remaining on the panel, require the Practitioner to undertake specified training relevant to the Practitioner's membership of a panel or list, within a nominated time period.

7 Audit and Compliance

- 7.1. The Practitioner agrees to provide the Commission with any information it reasonably requests which is relevant to the grant of legal assistance, the services provided to the assisted person, and the costs charged or to be charged for them.
- 7.2 If requested, the Practitioner agrees to deliver to the Commission the file or files relating to the matter for which legal assistance was provided.
- 7.3 The Commission will give the Practitioner written notice of the intention to conduct an audit.
- 7.4 The Practitioner will, within the time period specified in the written notice, produce for inspection or deliver such files, records or documents relating to a grant of legal assistance for the purpose of conducting the audit.

8 Complaints

- 8.1 The Commission will process all complaints in accordance with the Commission’s Complaints Handling procedures.
- 8.2 On receipt of a complaint the Commission will notify the Practitioner in writing and request a response to the complaint within a stipulated time.
- 8.3 The Practitioner agrees to respond to the Commission within the stipulated timeframe, ore request an extension of time if required.
- 8.4 Failure to respond to the Commission is grounds for removal from the panel.

Dated this _____ day of _____ 20____

SIGNATURE: _____

NAME: _____

Authority to Deposit Funds in Solicitor's Trust Account

In the matter of proceedings or dispute between:
_____(Legally Assisted Person)
And
_____(Other Party)

To: _____(Other Party)

And to: _____(Other Party's Solicitors)

I, _____ (name of assisted person) irrevocably authorise and direct you to pay all monies due to me for any reason, by any means and in any way whatever to my legal practitioner, to be deposited into my legal practitioner's trust account.

(Name and Address of Legal Practitioner)

Dated this _____ day of _____ 20

SIGNED: _____
(Assisted person)

WITNESSED: _____
(Witness)

WITNESS NAME: _____

WITNESS ADDRESS: _____

Annexure B

**Irrevocable Authority to repay Northern Territory Legal Aid
Commission before making other payments**

In the matter of proceedings or dispute between:

_____ (Legally Assisted Person)

And

_____ (Other Party)

I, _____ (legally assisted Person)

of _____ (address)

Authorise and direct my present solicitors _____ (Firm) and

future solicitors in the above matter:

1. to hold in their trust account any monies due, owing or received for any reason on my behalf.
2. to pay **the** sum that NTLAC determines to be the payment I am owing towards costs and expenses incurred by NTLAC on my behalf:
 - a. before any disbursement of any monies to me or any other person or entity at my direction; and
 - b. Within 14 days of the request by NTLAC

This authority does not limit or affect the right of NTLAC to demand payment of or towards the costs of providing legal aid to me or to require me to enter into a written security.

Signed: _____

Date: _____

NTLAC File Number: _____

Witness: _____

Witness Name: _____

Address: _____

The Director
Northern Territory Legal Aid Commission
Locked Bag 11
DARWIN NT 0801

Dear Sir/Madam

RE: PAYMENT OF COSTS
CRIMINAL PROPERTY FORFEITURE ACT (NT)

I have received a grant of aid from the Northern Territory Legal Aid Commission (“Commission”) for proceedings under the *Criminal Property Forfeiture Act (NT)* and understand that conditions apply to the grant.

Legal aid is not free and I understand that I may have to pay the costs of legal assistance to the Commission at the end of these proceedings. I must pay back the money as soon as I am told the amount. Interest may be charged until it is paid. If I cannot pay the full amount, I must contact the Commission to ask about paying it off by installments.

If I think I should not pay the total contribution, or any of it, I can ask the Commission to reduce or waive the contribution. The Commission may not agree to reduce or waive the contribution.

I must sign and date this letter, and return this copy to the Commission straight away or my grant of aid may be stopped.

My signature:Date: