

# Chapter 2

## Priorities for the Provision of Legal Assistance

### Part 1

### General Priorities

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- 1.1 In the provision of legal assistance, the Commission shall give priority to the following classes of **persons** in the following order:-
- (a) Persons whose individual liberty is threatened by legal processes.
  - (b) Persons whose safety is at risk.
  - (c) Persons who would be more severely disadvantaged than others (whether such disadvantage is expressed in terms of one or more economic, physical, cultural, linguistic, educational, geographic or other factors) if legal aid was not provided.
  - (d) Persons whose physical or mental health would be seriously affected or who because of a physical or mental disability have a special need for legal aid.
  - (e) Persons who as a result of old age or infirmity have a special need for legal aid.
  - (f) Persons who have a special need for legal aid because they have recently arrived in Australia and/or have difficulty in understanding the English language or the content and effect of Australian and/or Territory laws.
  - (g) Persons who, in the community interest, should receive priority such as children who are parties to, or the subject of, proceedings or otherwise involved with the law, and persons who are sole custodians of dependant children.
  - (h) Persons whose home and assets have been restrained by a court.
  - (i) Persons whose income is no more than a sum equivalent to that provided under social services legislation.
  - (j) Persons whose fundamental democratic freedom would be denied if legal aid was not provided.

1.2 In the provision of legal assistance, the Commission shall give priority to the following classes of **matters** in the following order:-

- (a) Matters in respect of which the applicant appears to have a reasonable defence and if convicted would be more likely than not to lose their liberty.
- (b) Matters as a result of the outcome of which the applicant is more likely than not to lose their liberty.
- (c) Matters as a direct or indirect result of the outcome of which the applicant is more likely than not to be dismissed from their employment or otherwise to lose their livelihood or vocation.
- (d) Matters as a direct or indirect result of the outcome of which the applicant is, in the opinion of the Director, reasonably likely to be removed from their home or otherwise to lose the right to continue to occupy their home.
- (e) Matters as a direct or indirect result of the outcome of which the applicant, or a dependant child of the applicant, is suffering or is likely to suffer exceptional hardship if the application is not granted.
- (f) Other matters where, in the opinion of the Director, the applicant is likely to be adversely affected if they are not legally represented and where legal representation will not otherwise be available to them.

1.3 In civil matters **priority will be given** to the following classes of **matters**:

- (a) Disputed workers compensation and work health applications;
- (b) Motor accident compensation claims where there has been a determination by a Designated Person refusing benefits;
- (c) Inquests where it is considered that the applicant's claim for damages will be significantly advanced if representation is made available for coronial proceedings. Assistance may also be granted where, in the opinion of the Director, there are strong reasons based on the public interest for providing representation to ensure a full airing of the facts, or where there is a reasonable likelihood that the applicant will be charged with a criminal offence as a result of the inquest;
- (d) Mental Health applications. Assistance is available but is generally confined to the provision of duty lawyer services;
- (e) Consumer credit disputes including matters under the *Trade Practices Act* where the applicant's case has real prospects of success and raises issues of genuine public interest;

- (f) Common law personal injuries claims;
- (g) Provided there are reasonable prospects of recovering the full cost of assistance at the successful conclusion of the claim, wage and wrongful dismissal claims;
- (h) Provided there are reasonable prospects of recovering the full cost of assistance at the successful conclusion of the matter where there has been an order restraining assets under the *Criminal Property Forfeiture Act (NT)* , or where the outcome of criminal proceedings may be affected;
- (i) Applications under the *Family Provisions Act (NT) 1980* where the costs of providing assistance does not outweigh the financial benefit to be obtained by the applicant.
- (j) Equal Opportunity and Discrimination Cases where there are strong prospects of substantial benefit being gained not only by the applicant but also by the public or a section of the public.
- (k) In respect of decisions or actions by Government authorities which have a real prospect of affecting a person's capacity to continue in his or her usual occupation.

1.4 In civil matters generally assistance will be limited initially to an investigation of the merits of the applicant's case.

Normally, further assistance will only be provided where:

- (i) the applicant has reasonable prospects of success; and
- (ii) there are reasonable prospects of recovering from the other party the amount of any judgment or costs order; and
- (iii) the applicant can establish that assistance is not available from the Northern Territory Contingency Legal Aid Fund.

In all applications for assistance in civil matters the Commission will weigh the benefit that the applicant is likely to derive against the estimated cost to the Commission of providing that assistance.

Where assistance is granted to an applicant to enable him or her to bring or defend a proceeding, the applicant should assume that they will most likely be required to repay to the Commission the ordinary professional costs of the legal services provided.

## Part 2

## Commonwealth Priorities

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### **1. General**

- 1.1 The Commonwealth Priorities for the provision of legal aid to applicants in the Northern Territory in respect of Commonwealth law matters are set out in clause 6 of the Agreement dated 23 May 2005 between the Commonwealth and the Northern Territory of Australia.
- 1.2 The Commonwealth Legal Aid Priorities set out the Commonwealth Law Matters that Litigation Services and PDR Services may be provided for by the Commission under Grants of Legal Assistance.
- 1.3 If a matter is a Commonwealth Legal Aid Priority, the provision of Litigation Services and PDR Services are subject to any relevant terms, conditions and limits imposed by the Commonwealth Legal Aid Guidelines on the provision of such assistance under a Grant of Legal Assistance.

### **2. Family Law Priorities**

A family law or child support matter arising under *the Family Law Act 1975*, the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988* is a Commonwealth Legal Aid Priority if it relates to any of the following:

- (a) separate representation of children
  - (b) any other orders relating to children, including parenting orders, location orders and recovery orders
  - (c) parenting plans
  - (d) injunctions relating to family violence
  - (e) child support and child maintenance
  - (f) spousal maintenance
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- (g) dissolution and nullity of marriage
- (h) property proceedings
- (i) enforcement proceedings, or
- (j) contempt and breach of court orders proceedings.

### **3. Criminal Law Priorities**

A criminal law matter that is a Commonwealth Law Matter is a Commonwealth Legal Aid Priority if it relates to the legal representation of a person charged with a criminal offence.

### **4. Civil Law Priorities**

A civil law matter that is a Commonwealth Law Matter is a Commonwealth Legal Aid Priority if it relates to any of the following:

- (a) a decision affecting the receipt or amount of:
  - A. a Commonwealth employee's compensation, or
  - B. a Commonwealth pension, benefit or allowance, including a pension, benefit or allowance relating to war veterans.
- (b) a decision or action by the Commonwealth in relation to a person that has a real prospect of affecting the person's capacity to continue in his or her usual occupation.
- (c) discrimination
- (d) migration
- (e) consumer protection, or
- (f) proceedings under the *Proceeds of Crime Act 2002*.

## **5. Other Matters taken to be Priorities**

- 5.1 A legal matter that is not a Commonwealth Legal Aid Priority under the preceding Part 2 is taken to be a Commonwealth Legal Aid Priority if:
- (a) the matter is a Commonwealth Law Matter
  - (b) there are Commonwealth Legal Aid Monies available to provide the Legal Aid Services set out at sub clause 1.2 for the matter, and
  - (c) either:
    - A. the matter is of a kind for which the Australian Government Minister, or his or her delegate, has previously given written approval for the provision of one or more of the Legal Aid Services set out at sub clause 1.2, or
    - B. the Commission considers that at least one of the special circumstances set in paragraph 5.2 exists in relation to the matter.
- 5.2 For the purposes of subparagraph 5.1 (c), a ‘special circumstance’ is any of the following:
- (a) the applicant has a language or literacy problem
  - (b) the applicant has an intellectual, psychiatric or physical disability
  - (c) it is difficult for the applicant to obtain legal assistance because the applicant lives in a remote location
  - (d) in relation to family law matters - there is, or is a likelihood of, domestic violence, especially if an allegation of domestic violence has been made by a party to the matter
  - (e) the applicant is a child
  - (f) the applicant is a person appointed by a court order under sections 15YF or 15 YG of the *Crimes Act 1914* to ask questions of a child complainant or child witness.