

# Chapter 3

## How to Apply for Legal Assistance

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### Part 1

### Application Forms

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A person requiring legal assistance must complete an **Application for Legal Assistance** and lodge it with the Legal Aid Commission. Application forms can be obtained from:

- (a) the office of the Northern Territory Legal Aid Commission - 6th Floor, 9-11 Cavenagh Street, Darwin.
- (b) the office of the Northern Territory Legal Aid Commission – 77 Hartley Street, Alice Springs.
- (c) the office of the Northern Territory Legal Aid Commission – 20 Second Street, Katherine.
- (d) the office of the Northern Territory Legal Aid Commission – 163 Paterson Street, Tennant Creek
- (e) most lawyers' offices
- (f) a duty lawyer

To minimise any delays to clients and expense to the Commission application forms must be fully and accurately completed and must be signed by the client or litigation guardian. The Commission must have sufficient information to decide:

- (i) whether an applicant is eligible;
- (ii) what, if any, contribution should be required;
- (iii) whether the case is one for which legal assistance should be provided.

Generally, clients will be referred to an advice session with a lawyer prior to applications being considered.

Practitioners and persons applying for legal assistance are advised that with respect to any application for legal assistance the Commission will require proof of the income and savings/investments of the applicant and any financially associated person before processing the application. Proof should consist of:

- (a) if the applicant and any financially associated person are employed, a copy of a recent pay slip(s), or a letter from the employer(s) or other proof of current weekly income;
- (b) if either is self employed, a copy of the most recent taxation return and a profit and loss statement;
- (c) if either is in receipt of a pension or benefit, a photocopy of both sides of the Statement of Benefit form from Centrelink or a completed Centrelink Consent Script;
- (d) if either have bank accounts or investments, a statement showing transactions in the account(s) over the past 3 months or where appropriate production of a passbook. This requirement may be waived subject to the Discretion of the Director.

In order to avoid unnecessary delays in the processing of applications practitioners are asked to note these requirements.

If a private practitioner is lodging the application on behalf of an applicant, the private practitioner must certify that the case has legal merit by signing the **Solicitor's Certificate** on the back of the application form, and providing written advice on merit.

Section 57 of the *Legal Aid Act (NT)* provides that it is an offence to make a false or misleading statement in relation to an application for assistance. In addition to the penalty provided the court may also order a person convicted of an offence to pay the Commission's expenses incurred.

The decision to grant or refuse the application is made according to the provisions of the *Legal Aid Act (NT)* and these guidelines.

The *Legal Aid Act (NT)* provides for a right of reconsideration and review where an applicant is dissatisfied with a decision refusing assistance.

If a person's financial or personal circumstances change after legal aid has been granted, but before the matter has concluded, the applicant and or their practitioner must notify the Commission. The Commission has the right to review eligibility for legal aid at any time.

Practitioners should note that where a person is reassessed and found to be ineligible, any work done on the client's behalf and not yet invoiced may not be paid where the practitioner was aware of the client's change in circumstances.

Legal assistance is provided by lawyers on the Commission's staff and by lawyers in private practice acting on assignment from the Commission. The Commission will endeavour to appoint the solicitor chosen by the applicant but this will depend on the availability of funds and other circumstances.

The Commission reserves the right to assign a matter to an inhouse lawyer where the Commission determines that this is the most efficient use of public resources. In indictable criminal matters, the Commission will endeavour to ensure that the same lawyers are involved in the committal and trial.

## Part 4 Reconsideration and Review of Decisions

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The decision, whether or not to grant legal aid, is an administrative decision. The *Legal Aid Act (NT)* “the Act” provides a process for reconsideration and then review of decisions to refuse a grant of legal aid.

### 4.1 Procedural Fairness Principles to Apply

Procedural fairness (natural justice) should apply to all decision making for reconsiderations and reviews. Procedural fairness is concerned with the procedures used by a decision-maker, rather than the actual outcome reached.

When undertaking a reconsideration or review the following principles apply:

- All previous decisions should be disregarded
- The decision maker stands in the shoes of the original decision maker and s/he will consider afresh all relevant questions of law and fact, and the Commission guidelines, and re-make the original decision
  
- There must be a lack of bias/ no conflict of interest
- The decision maker must bring an impartial mind which is open to persuasion, actually and in appearance
  
- A “fair hearing”, that is appropriate to the circumstances, must be given. This might entail:
  - Disclosing adverse material;
  - Giving an opportunity to make further representations, in particular to rebut adverse material; and/ or
  - Giving adequate notice (giving more time).
  
- There must be evidence to support a decision
- The new decision will take the place of the original decision
- Written reasons will be given for the decision

### 4.2 Reconsideration

An applicant for legal aid can request a reconsideration of a decision:

- refusing to provide legal assistance, including a partial refusal;
- imposing a condition on the provision of legal assistance or adversely varying a condition;
- terminating the provision of legal assistance;
- refusing to pay the whole or a part of the amount of costs awarded against the legally aided person; or

- in relation to any other matter relating to the provision or refusal of legal assistance.

The reconsideration will be undertaken by another **officer** of the Commission.

The request for a reconsideration should be in writing and received within 3 months of the written notification of the decision. An extension of time can be granted if there are special circumstances.

Additional information may be submitted in support of an application for reconsideration.

The officer conducting the reconsideration shall apply the Act and these Guidelines.

The officer may

- confirm the original decision;
- vary that decision; or
- substitute another decision

### **4.3 Review**

An applicant for legal aid who is dissatisfied with a reconsidered decision can request that a Review Committee be convened. The Review Committee panel is established under the Act and a Review Committee is to consist of:

- a private legal practitioner
- another officer of the Commission; and
- a suitably qualified community representative.

The request for a review should be in writing and received within 3 months of the written notification. An extension of time can be granted if there are special circumstances.

The applicant may make representations and place additional information before the Review Committee. The applicant may attend the Review Committee meeting to do so, they cannot remain for the discussions of the Review Committee.

The Review Committee shall apply the Act and these Guidelines. The Review Committee shall also have regard to:

- the amount of funds available to the Commission for the provision of legal assistance;
- the nature and extent of legal assistance that has been provided from those funds; and
- the nature and extent of the legal assistance that the Commission is likely to be required to provide in the future.

The Review Committee can request further information, including documents, from the Commission and the applicant for legal assistance.

The Review Committee shall:

- confirm the original decision;
- vary the original decision; or
- set aside the original decision and make a substitute decision.

The decision of the Review Committee should be confirmed in writing and sent to the applicant for legal assistance. Ordinarily this will include a short statement of reasons for the decision. This statement of reasons must be provided on request of the applicant

The decision of a Review Committee is final and conclusive.

The Review Committee members are:

- Bound by the secrecy provisions of the Act
- Subject to normal rules of conflict of interest should they have any prior knowledge of a matter which is referred to them
- Indemnified by the Commission for any liability that could be incurred in the performance of their duties.

#### **4.4 Reassessment Due to a Material Change in Circumstances**

Where there has been a material change in circumstances, a matter can be sent back to the original decision maker or the officer undertaking the reconsideration. This is at the discretion of the Commission.

## **Part 5      Retrospective Applications & Extensions**

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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

## Part 6

# Urgent Grants of Legal Assistance

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Where an urgent grant of legal assistance is required a lawyer may telephone a Legal Aid Commission Office.

The lawyer must satisfy the Commission that it is reasonable in all the circumstances to provide the legal assistance requested and that the applicant is financially eligible.

If legal assistance is granted, it is on the express understanding that a written application will be submitted as soon as possible and that the Commission must then be satisfied that the applicant qualifies for assistance. If, on receipt of the written application, the Commission is not satisfied that the applicant qualifies for assistance it will not pay any costs or disbursements incurred on behalf of that person.

## Part 7

## Late Applications for Assistance

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The late lodging of applications for legal assistance for trials and hearings creates administrative difficulties for the Commission and the courts and may disadvantage applicants. While late lodging of applications may be unavoidable in some circumstances, in the majority of cases instructions to act will be received by the practitioner some time before the trial or hearing. In these cases it should be possible to ascertain whether the client needs to apply for legal assistance and to lodge an application well before the trial or hearing is due to commence.

The Commission has decided that the provision, without reasonable cause, of an application for legal assistance within 28 days for Supreme Court, Federal Circuit Court and Family Court matters, or within 14 days for Local Court Matters of the date fixed for the trial or hearing constitutes grounds for the Commission to remove the practitioner from the panel maintained pursuant to Section 30 of the Legal Aid Act (NT).

## Part 8

## Termination of a Grant of Assistance

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The Commission may terminate a grant of legal assistance in the following circumstances:

1. Where a client unreasonably refuses to accept the advice of the allocated practitioner;
2. Where a client is abusive to Commission staff or the allocated practitioner;
3. Where a client is no longer eligible for a grant of legal assistance;
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.)

## Part 9

# Interstate Applicants or Proceedings The Forum Test

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9.1 The Forum Test (also known as the Reciprocity Agreement) is the test adopted by all Australian Legal Aid Commissions to determine which Commission should consider a grant of assistance for an interstate applicant.

9.2 The Forum Test provides as follows:

- (a) Where the applicant for legal assistance is resident in a State or Territory and the grant of assistance relates to an action to be taken outside the State or Territory, the forum test is to be applied and the question of assistance will be the sole responsibility of the Commission in the State or Territory in which the action is taken.
- (b) Where a grant of legal assistance has been made to a resident in a State or Territory and the proceedings are transferred to a court or tribunal of the equivalent jurisdiction outside that State or Territory, the grant of assistance will continue to be the responsibility of that Commission which will manage the file and will be responsible for any interstate agent's fees incurred, provided the relevant means and merits tests of the Commission continue to be satisfied. Should the jurisdiction change, the applicant will be required to make a fresh application.
- (c) Where a person to whom legal assistance has been granted ceases to reside in a State but the proceedings have not been transferred, the grant of assistance will continue to be the responsibility of the Commission in the State or Territory in which the action is being taken. However, the quantum of the grant will be subject to review particularly in regard to possible changes in the financial position of the applicant.
- (d) Where a person to whom legal assistance has been granted ceases to reside in a State or Territory and the proceedings are also transferred to a forum outside that State, the grant will be transferred to the Commission in the State or Territory to which the proceedings are transferred. However, the grant will be subject to review, particularly having regard to possible changes in the financial position of the applicant and the merits test and guidelines of the transferee Commission.
- (e) Where proceedings have been funded by one Commission and aid is transferred in accordance with paragraph (d) above, the new

Commission will, on satisfactory conclusion of the matter, collect from the legally assisted person on behalf of the initial Commission that proportion of the costs and outlays to which the initial Commission may have been entitled.

Applicants seeking assistance from a new Commission pursuant to the Reciprocity Agreement should be assessed against the eligibility thresholds apply that in the State or Territory in which assistance is sought.