

Chapter 7

Contributions

The Commission is entitled to impose upon applicants for assistance financial contribution towards the cost of providing legal assistance.

1. Generally

In assessing contributions, the Commission is governed by two fundamental principles:

- 1.1 An assisted person shall be required to contribute to the cost of providing assistance.
- 1.2 An assisted person shall be placed in a position which, as far as possible, is the same or similar to that of a non-legally aided person as far as costs are concerned.

Contributions are assessed on the following guidelines:

- (a) The ability of the assisted person to pay, by reference to their net assessable income and assets.
- (b) The cost to the Commission of providing assistance
- (c) The extent to which an assisted person or other parties have, by their unreasonable conduct, unnecessarily increased the cost of proceedings.

2. Compulsory and Initial Contributions

A compulsory initial contribution is imposed on all successful applicants at the commencement of the grant of aid irrespective of the financial circumstances of the applicant subject to the Director's discretion. The amount of the compulsory contribution is the lowest amount specified for initial contributions as set out in Table A.

3. Varying Contributions Set by Category

Where legal assistance is extended by reference to particular stages of a matter, those stages may fall into different cost categories and additional contribution based on income may be payable where assistance is extended for a further stage.

4. Retrospective or Final Contributions

The NT Legal Aid Commission may require the payment of a final contribution at the end of a grant of assistance in the following circumstances:

4.1 When a Final Contribution is Assessed

The Commission can request a final contribution at the end of the grant of legal assistance where:

- 4.1.1 the assisted person's financial position has improved after the grant of assistance or the last extension of the grant;
- 4.1.2 at the time of the extension of the grant, the assisted person's future financial position was unclear;
- 4.1.3 the actual cost of assistance has exceeded the estimated cost;
- 4.1.4 the cost of assistance exceeds the cost recovered by the assisted person;
or
- 4.1.5 the assisted person has not recovered costs.

In these circumstances the Commission will:

- (a) apply the Means Test (including allowable deductions) to the applicant's financial circumstances to assess whether he/she should pay a final contribution, and if so the amount to be paid;
- (b) treat the actual cost of the legal assistance in the same way as the estimated cost in the Means Test;
- (c) deduct any contributions which the applicant has paid to date from the final contribution;
- (d) request payment of the final contribution by installments if the application is required to pay a contribution on income; and

- (e) request payment of the final contribution in a lump sum if the applicant is required to pay a final contribution on assets.

4.2 Matters to be Disregarded

When a final contribution is assessed the Commission will disregard:

- (a) a lump sum payment for child maintenance or child support in a family law case;
- (b) amounts which must be repaid from an award or settlement to Centrelink or any other organization; and
- (c) legal costs incurred but not paid before the grant of assistance.

4.3 Assisted Person Acquires Property from Legal Proceedings

If an assisted person acquires property as a result of the legal proceedings which were the subject of the grant of assistance, but does not have enough money to pay a final contribution, the Commission may secure repayment of the final contribution by taking an equitable charge or a statutory charge over the property so acquired.

4.4 Special Circumstances

The Commission recognises that there may be circumstances of recovery where recovery of the full cost of assistance may cause financial hardship or inequity to an assisted person. In these circumstances the Commission may:

- 4.4.1 waive the requirement for the assisted person to pay all or some of the final contribution;
- 4.4.2 defer payment of some or all of the final contribution on condition that the assisted person sign an equitable charge to secure payment of the final contribution; or
- 4.4.3 defer payment of some or all of the final contribution without requiring a charge.

Special Circumstances may include:

- (a) an award for damages in a personal injuries case which is not sufficient to pay the assisted person's past, present or future medical expenses;

- (b) the necessity to use an award to alter the assisted person's home to accommodate disability;
- (c) Centrelink imposing a preclusion period which prevents the applicant from receiving a pension, benefit or allowance, and the applicant has insufficient other financial support during the preclusion period;
- (d) the assisted person suffering a disadvantage as a result of legal assistance. For example, a court refuses to make an order for costs on the ground that the assisted person had received a grant of assistance.

The Commission will not usually consider the following as special circumstances:

- A. the assisted person has spent, or is committed to spending, some or all of an award;
- B. the assigned practitioner has released an award without accounting to the Commission, and the assisted person is unable or unwilling to pay the final contribution assessed;
- C. the assisted person wishes to use the award to pay debts rather than the final contribution, particularly if the assisted person incurred the debts after the grant of assistance; or
- D. the assisted person wishes to use an award to buy a home or for home renovations.

5. Charges Over Property

Pursuant to Sections 29(1)(c) and 59 of the Legal Aid Act (NT) the Commission may secure payment of a contribution by statutory or equitable charge over land or other property of the assisted person.

If such charges were not taken, assisted persons who were unable to pay contributions immediately because their assets were in the form of property rather than cash, would be placed in a preferred position to assisted persons who could afford a contribution because their assets (while not greater in total value) were in the form of cash rather than property.

The charge is placed on property owned by the assisted person. If the assisted person wants to sell, re-finance or borrow on the property, the Commission may ask that some or all of the cost of assistance be repaid before releasing the property.

The request for an equitable charge can be made in addition to, or instead of, a request that the assisted person pay money as a contribution. The Commission may ask that

an equitable charge over property or a statutory charge within the meaning of the *Land Title Act* be provided:

- (a) Before the Commission grants assistance. This will secure payment of all or some of the cost of granting assistance.
- (b) When the Commission makes a further grant of assistance. This will secure payment of all or some of the current and future costs of assistance.
- (c) At the end of a grant of assistance. This will secure payment of the amount assessed as a final contribution.

5.1 Refusal to Provide a Charge

5.1.1 *Before a Grant*

If the Commission asks an assisted person to sign a charge before granting assistance, assistance will not be provided until the charge (in registrable form in the case of real property) is returned to the Commission.

5.1.2 *Existing Grant*

If the Commission asks an assisted person to sign an equitable charge, the grant of aid will be suspended and the assigned practitioner will be advised to stop work until the charge is received by the Commission.

If the Commission suspends assistance as described in the last paragraph, it will notify the assisted person in writing. The assistance may then be terminated unless the assisted person takes the following action within 30 days of receiving the written notification:

- (i) he/she signs the charge;
- (ii) he/she provides a satisfactory explanation for not signing; or
- (iii) he/she asks the Commission to review its decision.

6. Non Payment of Contributions

Pursuant to Section 29(4) of the Legal Aid Act (NT) if the contribution required is not paid by the assisted person, the amount of the contribution raised is recoverable by the Commission as a debt due and payable to the Commission. In these circumstances any future application for legal aid will be refused.

In all cases where an award or settlement is made in a client's favour, practitioners must not disburse funds to the client until the Commission's costs have been paid.

In all cases the practitioner should contact the Commission prior to final settlement to determine whether a final contribution is to be imposed, and, if so, the amount of the contribution.

In certain circumstances, at the discretion of the Director, or in accordance with the Northern Territory Civil Guidelines, an assisted person may be required, before assistance is approved, to instruct his/her solicitor to seek an order that an award or settlement made in the assisted person's favour be made out in the name of the solicitors trust account and paid into the account with further instructions that the cost of the legal assistance provided be paid to the Commission before the balance, if any, is payable to the legally assisted person.

TABLE A – CONTRIBUTION ON INCOME

CONTRIBUTION ON INCOME			
Net Income \$	Category 1 Up to \$830	Category 2 \$831 to \$3135	Category 3 Over \$3136
0 – 451	110	110	110
452 – 461	110	110	110
462 – 471	120	220	440
472 – 481	150	240	480
482 – 491	180	300	530
492 – 501	225	360	730
502 – 511	305	450	920
512 – 521	340	610	1120
522 – 531	400	680	1360
532 – 541	475	800	1605
542 – 551	550	950	1900
552 – 561	645	1100	2200
562 – 571	750	1290	2580
572 – 581	830	1500	2940
582 – 591		1660	3320
592 – 601		1750	3500
602 – 611		1980	3960
612 – 621		2210	4420
622 – 631		2440	4880
632 – 641		2675	5350
642 – 651		2905	5810
652 – 661		3135	6270

\$662.00 and over - assistance for Category 3 only.

Contribution to be \$6270.00 plus \$460.00 for every \$10.00 of assessable income more than \$662.00.

TABLE B – CONTRIBUTION ON ASSETS
(Rounded to nearest \$100)

NET ASSET	CONTRIBUTION
100	50
200	50
300	60
400	80
500	100
600	130
700	160
800	190
900	220
1000	250
1100	290
1200	330
1300	370
1400	410
1500	450
1600	500
1700	550
1800	600
1900	650
2000	700
2100	760
2200	820
2300	880
2400	940
2500	1000
2600	1060
2700	1120
2800	1180
2900	1240
3000	1300

Above \$3,000 :- \$1,300 plus 100% of assessable assets above \$3,000