Guidelines

Current as at 4 September 2026

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Chapter 1 Principles for Granting Legal Aid

Part 1 Introduction

The provision of legal services by the Legal Aid NT 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.

Legal Aid NT 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 Legal Aid NT'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.

Legal Aid NT'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.

Part 2 Guidelines

Both Legal Aid NT and the Commonwealth have issued guidelines in accordance with which legal assistance services are to be provided by Legal Aid NT. 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 Legal Aid NT may take the form of legal advice or help from one of its duty lawyers at the Local Court, Youth Justice Court or Supreme Court 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 however in special circumstances the Commission may impose a means test. 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.

Part 3 Legal Services Provided

1. Legal Advice

Legal Aid NT lawyers may give advice on legal matters free of charge.

Advice will be given at Legal Aid NT 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

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

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 may provide services in the Supreme Court for those summonsed or in custody for an alleged breach of a suspended sentence. 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.

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

3. Legal Assistance

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 Legal Aid NT 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 they are 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.

Legal Aid NT must apply three tests to any application for legal assistance; a means test, a guidelines test and a "reasonableness" or merits test.

4. 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.

5. 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 Legal Aid NT 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.

6. Merits Test

(1) To satisfy the merits test, the applicant for assistance must meet each of the following 3 tests:

(a) the **reasonable prospects of success** test;

(b) the **prudent self-funding litigant** test; and

(c) the **appropriateness of spending limited public legal aid funds** test.

(2) The **reasonable prospects of success test** is met only if, on the information provided to Legal Aid NT, it appears to Legal Aid NT that, on the legal and factual merits, the proposed action, application, defence or response for which a Grant of Legal Assistance is sought is more likely than not to succeed.

(3) The **prudent self-funding litigant test** is met only if Legal Aid NT considers that a prudent self-funding litigant would risk their own financial resources in funding the proposed action, application, defence or response for which a Grant of Legal Assistance is sought.

Note Legal aid is a benefit funded by Australian taxpayers. Many taxpayers who are above the means test threshold for the granting of legal assistance have their own access to justice constrained in whole or in part because of limited financial resources. To reduce the inequity between those who have access to assistance and those who are marginally excluded, the Commonwealth aims to have strategies adopted that will provide solutions to assisted clients' problems at minimum cost. The test of the 'prudent self-funding litigant', one without 'deep pockets', is one such strategy. It aims to put assisted litigants into an equal but not better position than private litigants without 'deep pockets' who risk their own funds.

(4) The **appropriateness of spending limited public legal aid funds test** is met only if Legal Aid NT considers that the costs involved in providing the assistance are warranted by the likely benefit to the applicant or, in appropriate circumstances, the community.

Note The Commonwealth has numerous competing interests for its legal aid resources, and accordingly requires Legal Aid NT to be satisfied that the matter for which legal assistance is sought is an appropriate expenditure of Commonwealth legal aid program resources. Examples of what the Commonwealth considers to be inappropriate expenditures of Commonwealth legal aid resources are:

(a) applications to the court to dispense with a spouse's consent to a passport so that the applicant and child can travel overseas (as the Commonwealth considers that the contingent documentary costs of overseas travel should form part of the overall expense of the trip), and

(b) some aspects of family law contact and property disputes, where the issue appears to be of minor significance in relationship to the legal costs that will be incurred in providing the legal assistance, for example, in a contact dispute, where the issue in dispute is who will pay for the child's bus or taxi fare, or who washes the child's clothes, or who provides the child's morning or afternoon tea.

The merits test is to be applied to all applications for a Grant of Legal Assistance, unless otherwise specified.

7. Test cases

(1) In considering whether to make a Grant of Legal Assistance, Legal Aid NT may take into account whether funding is available from another Commonwealth scheme such as the Commonwealth Public Interest and Test Cases Scheme

Chapter 2
Legal Assistance Priorities

Part 1 General Priorities

1 In the provision of legal assistance, Legal Aid NT 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 dependent 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.

2 In the provision of legal assistance, Legal Aid NT 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 dependent 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.

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 2002* (NT), or where the outcome of criminal proceedings may be affected;

(i) Applications under the *Family Provisions Act 1970* (NT) 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 their usual occupation.

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 Legal Aid NT will weigh the benefit that the applicant is likely to derive against the estimated cost to Legal Aid NT of providing that assistance.

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

Part 2 Commonwealth Priorities

1. General

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.

2 The Commonwealth Legal Aid Priorities set out the Commonwealth Law Matters that Litigation Services and PDR Services may be provided for by Legal Aid NT under Grants of Legal Assistance.

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

(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 their 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 their 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. Legal Aid NT 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.

Chapter 3
Applications for Legal Aid

Part 1 Application Forms

A person requiring legal assistance must complete an **Application for Legal Assistance** and lodge it with Legal Aid NT.

To minimise delays, application forms must be fully and accurately completed and must be signed by the client or litigation guardian. Legal Aid NT must have sufficient information to determine whether an applicant is eligible for aid.

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

Part 2 Validation Requirements

Practitioners and persons applying for legal assistance are advised that with respect to any application for legal assistance Legal Aid NT 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 Legal Aid NT'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 Legal Aid NT. Legal Aid NT 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.

Part 3 Allocation of Lawyer

1. Allocation of Lawyer

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

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

1. In making available the services of a private legal practitioner or the services of an officer of Legal Aid NT, the following will be considered:

   (a) the funds then available to Legal Aid NT;

   (b) whether a decision to make available the services of an officer of Legal Aid NT might give rise to a conflict of interest on the part of that officer or any other officer of Legal Aid NT;

   (c) the degree of urgency of the matter in respect of which legal assistance is to be provided;

   (d) any hardship which might be occasioned to the applicant arising out of the location of the office of Legal Aid NT or of a particular private legal practitioner; and

(e) where it is relevant because of the background of the applicant or the nature of the matter, whether or not an officer of Legal Aid NT or a particular private legal practitioner or any member of the staff of a particular private legal practitioner may be fluent in a foreign language.

2. (a) Subject to this clause, legal assistance shall generally be provided by making available the services of an officer of Legal Aid NT, in the following classes of matter:

(i) Local Court Committals, indictable criminal trials and pleas in the Supreme Court;

(ii) criminal appeals;

(iii) proceedings for dissolution of marriage;

(iv) applications under the Mental Health Act; and

(v) Family Matters Court proceedings.

This does not preclude an officer of Legal Aid NT engaging the services of counsel in any matter where it is considered appropriate.

(b) Where an applicant for legal assistance expresses a preference for the services of a particular private legal practitioner, and it is in the opinion of the Director, by reason of the existence of exceptional circumstances, desirable that legal assistance be provided by making available the services of that private legal practitioner rather than those of an officer of Legal Aid NT, legal assistance, if granted, may be provided by making available the services of that practitioner.

(c) Legal assistance may be provided by making available the services of a private legal practitioner where, in the opinion of the Director:

(i) there is no officer of Legal Aid NT available to provide the assistance; or

(ii) to provide the assistance by making available the services of an officer of Legal Aid NT would be likely to result in a conflict of interest on the part of an officer of Legal Aid NT.

3. Subject to Clauses 1 and 2:

(a) where a person, in a written application for legal assistance, expresses a preference for the services of a particular officer of Legal Aid NT, legal assistance, if granted, shall be provided by making available the services of that officer provided that they are available.

(b) where a person, in a written application for legal assistance, expresses a preference for the services of a particular private legal practitioner, legal assistance, if granted, shall be provided by making available the services of the practitioner.

(c) where a person, in a written application for legal assistance, expresses a general preference for the services of an unspecified private legal practitioner, legal assistance, if granted, shall be provided by making available the services of a private legal practitioner whose name is on the list maintained under section 30(1) to the *Legal Aid Act (NT)* and who shall be selected by the Director having regard to the interests of the legally assisted person, the nature of the legal practice of the private legal practitioner and the expertise of the private legal practitioner in the relevant field of law.

(d) where a person, in an application for legal assistance, does not express any preference for the services of a private legal practitioner or an officer of Legal Aid NT, legal assistance, if granted, shall be provided by making available the services of an officer of Legal Aid NT in preference to those of a private legal practitioner.

2. Transfers

(a) Where the services of a private legal practitioner or of an officer of Legal Aid NT have been made available to a legally assisted person, and that person has notified the Director that they wish to have their grant of aid transferred to another private legal practitioner or to an officer of Legal Aid NT, the Director shall only transfer the grant where it is appropriate in the circumstances to do so or no additional expense to Legal Aid NT 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 Legal Aid NT 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 Legal Aid NT a contribution or further contribution of a specified amount towards the costs of Legal Aid NT 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 4 Reconsideration and Review of Decisions

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.

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 will consider afresh all relevant information and Legal Aid NT 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

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 Legal Aid NT.

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

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 Legal Aid NT; 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 Legal Aid NT 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 Legal Aid NT is likely to be required to provide in the future.

The Review Committee can request further information, including documents, from Legal Aid NT 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 Legal Aid NT for any liability that could be incurred in the performance of their duties.

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 Legal Aid NT.

Part 5 Retrospective Applications & Extensions

Legal Aid NT will not generally approve invoices for work performed by practitioners where prior approval has not been obtained from Legal Aid NT.

Practitioners should therefore monitor the amount of commitment available on a file and ensure appropriate approvals are sought before work is performed.

Part 6 Late Applications for Assistance

The late lodging of applications for legal assistance for trials and hearings creates administrative difficulties for Legal Aid NT 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.

Legal Aid NT has decided that the provision, without reasonable cause, of an application for legal assistance within 28 days for Supreme Court, Federal Circuit and Family Court of Australia matters, or within 14 days for Local Court Matters of the date fixed for the trial or hearing constitutes grounds for Legal Aid NT to remove the practitioner from the panel maintained pursuant to Section 30 of the *Legal Aid Act 1990* (NT).

Part 7 Termination of a Grant of Assistance

Legal Aid NT 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 Legal Aid NT 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 8 Costs Awarded Against A Legally Assisted Person

1. A request that Legal Aid NT pay to another party on behalf of a legally assisted person an amount representing the whole or a part of costs directed to be paid by the legally assisted person, shall be made in writing to the Director and shall be supported by such material as the Director may require, verified by the statutory declaration of the person making the request.

2. Legal Aid NT shall not pay any amount pursuant to such a request unless the officer or Legal Aid Committee deciding the request is satisfied that the legally assisted person will suffer substantial hardship unless the amount requested to be paid, or some lesser amount, is paid.

3. Legal Aid NT shall not pay an amount upon the request of the legally assisted person if, in the opinion of the officer or Legal Aid Committee deciding the request, the legally assisted person failed to disclose any significant and relevant matter in their application for assistance; or where they were specifically advised that Legal Aid NT would not meet any order for costs made against them.

4. In making a decision upon a request by the legally assisted person or the other party, the officer or Legal Aid Committee shall have regard, inter alia, to the following matters:

   (a) the effect on the person making the request and on the legally assisted person, of the result of the proceedings;

   (b) the effect on the person making the request and on the legally assisted person of a refusal to meet the request in whole or in part;

   (c) the amount at issue in the proceedings;

   (d) the amount at issue between the parties by way of costs;

   (e) any other action or remedy available to the person making the request or to the legally assisted person;

   (f) the conduct of the person making the request during the proceedings;

   (g) the conduct of the legally assisted person during the proceedings;

   (h) whether or not Legal Aid NT was given any notice of the likelihood of the making of an order for costs against the legally assisted person and of the likely amount of such costs;

   (i) whether or not the matter or proceeding was in the nature of a test case having a potential benefit to persons other than the legally assisted person or the person making the request, being persons likely to be within the means test determined by Legal Aid NT; and

(j) the funds available to Legal Aid NT for the purpose of meeting the request and the effect of meeting the request in whole or in part on the capacity of Legal Aid NT to provide legal assistance in the future.

5. It has been determined that Legal Aid NT will not pay, on the application of the other party, an amount in respect of costs incurred in a proceeding at first instance, unless it appears to Legal Aid NT that the person who made the request will suffer substantial hardship if that amount is not paid by Legal Aid NT.

6. In determining whether or not a person will suffer substantial hardship, in accordance with paragraphs 2 and 5, regard shall be had by the officer or Legal Aid Committee to, inter alia, the following matters:

(a) whether the person, or another person who usually resides with them, will lose or be forced to vacate their home;

(b) whether the person will lose a motor vehicle, or the use of a motor vehicle, reasonably necessary for domestic or employment purposes;

(c) whether the person will lose furniture or effects reasonably necessary for the wellbeing of themselves and their dependants; and

(d) whether the person will lose their employment or livelihood

Part 9 Interstate Applicants or Proceedings

The Forum Test

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.

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 Legal Aid NT 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

Legal Aid NT 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 Legal Aid NT 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 Legal Aid NT 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.

Chapter 4
Means Test

Part 1 Who Qualifies?

To be financially eligible for legal assistance an applicant must satisfy both the income and assets tests. Subject to all the provisions of the Means Test, an applicant will be financially eligible for legal assistance if their total contribution is less than the estimated cost of the proceedings which are the subject of the application for legal assistance.

The Means Test consists of:

1. Income Test;
2. Assets Test;
3. General Discretionary Matters;
4. Likely Cost of Matters;
5. Children;
6. Benchmark Indicators (see Schedules A and B).

Part 2 The Income Test

The income of an applicant is taken into account in determining whether or not assistance should be granted.

1. Definition of Income

The income of an applicant for assistance is the weekly income, from all sources, of the applicant and any financially associated person. Income is calculated nett of business overhead/expenses reasonably incurred.

Note: Such overhead/expenses shall not be considered reasonably incurred merely because they have been, or are likely to be allowed or allowable deductions by the Commissioner of Taxation for the purposes of the Income Tax Assessment Act 1936.

2. Definition of Assessable Income

The assessable income of the applicant is the income which is taken into consideration in determining whether legal assistance should be granted and includes the income of any financially associated person who is living in a financially supportive relationship with the applicant *unless*:

(i) they are separated;

(ii) the financially associated person has a contrary interest in the matter for which legal assistance is sought;

(iii) disclosure of the legal problem may damage the relationship; or

(iv) there are other special reasons why the income of the financially associated person should be disregarded;

less all allowable deductions.

This is the assessable or net income for the purposes of the means test.

3. Definition of Financially Associated Person

In the Means Test a **financially associated person** includes a person:

(a) from whom the applicant usually receives financial support; or

(b) to whom the applicant usually provides financial support; or

(c) who would be likely to financially assist the applicant in obtaining legal services.

“Person” may include a relative, partner, spouse, guardian, corporation, trust, group or other financially associated entity whether legally constituted or not.

4. Allowable Deductions

The following allowances should be deducted from the applicant's income:

(a) Income tax, including Medicare levy;

(b) Weekly housing cost, being rent, or mortgage plus rates, as set out in Schedule B;

(c) Childcare costs necessarily incurred to enable the applicant or other person whose income is included in the assessable income to work or study, to a maximum as set out in Schedule B;

(d) Dependant allowance as set out in Schedule B. A dependant allowance should be deducted for any dependant children and for a financially associated person; and

(e) Maintenance payments up to the amount of the appropriate dependant allowance as set out in Schedule B.

Part 3 The Assets Test

The assets of the applicant are also taken into account in determining whether or not legal assistance should be granted.

1. Assessable Assets

The assessable assets of an applicant are the total assets of the applicant and any financially associated person who is living in a financially supportive relationship with the applicant *unless:*

(a) they are separated;

(b) the financially associated person has a contrary interest in the matter;

(c) disclosure of the legal problem would damage the relationship; or

(d) there are other special reasons why the financially associated person's assets should be disregarded;

less excluded assets.

2. Excluded Assets

The following assets are excluded from the applicant's assessable assets:

(a) Household furniture and effects which are reasonably necessary;

(b) Clothing;

(c) Equity in tools of trade, unless they are of exceptional value;

(d) Equity in up to two motor vehicles, where those vehicles belong to a household of two or more persons whose combined incomes are assessable for the purposes of the application for assistance, where the combined total equity does not exceed the maximum set out in Schedule B;

(e) Equity in the principal place of residence which includes a dwelling, caravan, or any other accommodation in which the applicant normally resides; or land on which the applicant is actually currently building a home or has recently completed building a home in which he/she intends to reside, up to the maximum set out in Schedule B;

(f) The equity in a farm or business which provides the applicant's main source of income up to the maximum set out in Schedule B;

(g) In certain circumstances, as the Director shall determine, lump sum payments such as compensation or superannuation upon retrenchment or resignation in hand where neither the applicant nor any financially associated person is

working and where the person to whom the compensation was paid is not entitled to receive any benefit or pension; and

(h) Lump sum child or spouse maintenance in hand where the applicant is receiving a pension or benefit at a reduced rate under the maintenance income test.

NOTE: Where the lump sum payment does not prevent the applicant from drawing a Social Security benefit it should be assessed as an asset.

3. Sale of Excluded Assets

Where it appears reasonably likely that an excluded asset will be sold during the course of the matter and that the applicant will receive sufficient funds to pay privately for the required legal services, assistance may be refused.

4. Discretion to Disregard Home Equity of Aged Applicants

Where an applicant is ineligible for assistance due to excess equity in accommodation and is:

(a) aged over 60 years; and

(b) in receipt of an income tested pension or benefit; and

(c) who has lived in their home for 5 years or more unless it has been necessary to buy alternative accommodation by reason of disability or ill health,

the Director may in their absolute discretion disregard that excess equity.

5. Assets for Which Ownership is in Dispute

An asset, the actual ownership of which is the issue for which legal assistance is sought, should be an excluded asset until ownership is clarified. If, ultimately, the applicant's ownership is determined, a contribution should be imposed having regard to the value of the asset and the cost of the legal assistance provided. This does not include assets in matrimonial property disputes where the legal issue is proportionate distribution rather than actual ownership.

An asset, apparently owned by the applicant or other person whose assets are assessable, which is not the subject of the matter for which legal assistance is sought, should be regarded as the applicant's asset and included in any means test assessment unless the applicant or other person satisfies Legal Aid NT that he/she is not the owner of the asset.

6. Debts

Debts are not allowable as a set off against assets unless they are secured against specific assets by a registerable instrument or unless, in the absolute discretion of the Director, there are exceptional reasons for taking them into account.

7. Assets Allowance

Without taking into account excluded assets, an applicant may have assets up to the maximum value set out in Schedule B and still be eligible for legal assistance provided the income test is also satisfied.

Part 4 General Discretionary Matters

1. Ability to Borrow

Where an applicant who is otherwise eligible for assistance can reasonably be expected to raise the necessary funds from private sources or lending institutions or to obtain the services on credit, assistance should be refused.

2. Other Sources of Support

In assessing the applicant's means Legal Aid NT may take into account any financial support actually provided to the applicant or financially associated person by any other person or association including any support which would be likely to be provided upon request e.g. from trust funds.

3. Discretionary Trusts

Legal Aid NT will consider the trust structure and if it finds that the trust is not genuine such that the applicant retains effective control or the trustee is providing financial support to the applicant or will probably provide it upon request, the assets of the trust will be assessed in accordance with the criteria of the means test.

Legal Aid NT may determine these factors by examining:

(a) the legal framework of the trust;

(b) who has the power to appoint and remove trustees and beneficiaries;

(c) the history of transactions such as previous distributions;

(d) any changes in the trustees;

(e) any changes in the class of beneficiaries; and

(f) the source of any income received by the trust.

Where there is no direct evidence that the applicant is receiving financial support from the trust, but enjoys a standard of living higher than their own means should allow, the receipt of support from the trust may be inferred.

4. Lifestyle Guideline

Where available information suggests that an applicant's lifestyle, activities or interests are such that in the opinion of the Director the applicant should have, or have access to, sufficient means to be able to afford to pay for the services of a private practitioner without undue hardship, the application may be refused.

5. Corporations, Associations and Groups

Where the applicant seeking legal aid is a group then the means to be considered are the means of the group.

In considering the means of the applicant/group, regard will be had to the financial support that would be available from those members of the community who would be likely to support the aims of the group in the matter for which assistance is sought.

In considering the means of the applicant/group, regard will also be had to the group's ability to afford the cost of the legal proceedings having regard to their assets or the general assets of the group.

Part 5 Likely Cost of Proceedings

The likely cost of proceedings for which legal assistance is sought is the cost reasonably determined by the Director.

The level of contribution is set out in Tables A and B in Part 6 of Chapter 4. Category 1 contains matters which in the opinion of the Director are likely to cost less than $830. Category 2 contains matters likely to cost between $830 and $3,135 and Category 3, matters likely to cost more than $3,135.

Schedule A Benchmarks

1. Income Test

(a) Net Income

The generic benchmark currently applied by NTLAC for net weekly income is 110% of the Henderson Poverty Line by reference to the "Head in Workforce, Other than Housing, Single Person" indicator as set out in Table 1 of the Henderson Poverty Line Tables.

(b) Housing Costs

The generic benchmark for determining the maximum deduction allowable for housing costs is the median weekly price of renting a unit in the Greater Darwin region.

(c) Childcare Costs

The generic benchmark for determining the maximum deduction allowable for childcare is 50% of the average weekly cost of long day childcare for a single child at a childcare centre in Darwin.

(d) Dependant Allowance

The generic benchmark for determining the first dependant allowance is the difference between the selected percentage of the Henderson Poverty Line figures contained in Table 1 of the Henderson Poverty Line Tables using "Head in Workforce, Cost other than Housing, Single Parent plus one" and "Head in Workforce, Cost other than Housing, Single Person".

The benchmark for determining the second and subsequent dependant allowance is the difference between the selected percentage of the Henderson Poverty Line figures contained in Table 1 of the Henderson Poverty Line Tables using "Head in Workforce, Cost other than Housing, Single Parent plus two" and "Head in Workforce, Cost other than Housing, Single Parent plus one".

2. Assets Test

(a) Equity in Housing/Principal Home

The generic benchmark for determining the maximum allowable equity in housing/principal home is the median price of a unit in the Greater Darwin Region.

(b) Equity in Motor Vehicles

The generic benchmark for determining the maximum allowable equity in a motor vehicle is the average price in the Northern Territory of a 5-year-old, 4 to 6 cylinder family car.

(c) Allowable Assets

The original benchmark figures for allowable assets in 1999 were $750 for a single person and $1,500 for a person with dependants. The formula for updating this figure is the weighted average of the CPI/AWE in accordance with Commission Funding Agreements.

Schedule B Benchmark Amounts

As at 4 September 2026

INCOME TEST

Net Weekly Income	$521
Housing Costs	$580
Childcare Costs	$325
Dependant Allowance	$177 for first dependant $167 subsequent dependants
Maintenance Payments	$177 for first dependant $167 subsequent dependants

ASSETS TEST

Equity in housing/principal home	$450,000
Total equity in motor vehicles	$26,542

Allowable Assets

- Single applicant $1680
- Applicant with dependants $3220

Part 6 Contributions

Legal Aid NT is entitled to impose upon applicants for assistance financial contribution towards the cost of providing legal assistance.

1. Generally

In assessing contributions, Legal Aid NT 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 Legal Aid NT 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 with the exception of matters where the recipient of the grant of aid:

a) Is under the age of 18 years and before the Youth Justice Court;

b) Does not receive or have access to income, significant assets, or other payments of any kind except Centrelink payments.

c) Is seeking assistance in relation to:

   i. a Domestic Violence Order Application;

   ii. a National Disability Insurance Scheme Review; or

   iii. a Veterans issue.

d) Is in possession of other relevant factors, consideration of which will be 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

4.1. When a Final Contribution is Assessed

Legal Aid NT 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 Legal Aid NT 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 instalments 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 Legal Aid NT 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, Legal Aid NT 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

Legal Aid NT 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 Legal Aid NT 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.

Legal Aid NT 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 Legal Aid NT, 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) Legal Aid NT 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, Legal Aid NT 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. Legal Aid NT may ask that an equitable charge over property or a statutory charge within the meaning of the *Land Title Act* be provided:

(a) Before Legal Aid NT grants assistance. This will secure payment of all or some of the cost of granting assistance.

(b) When Legal Aid NT 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 Legal Aid NT 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 Legal Aid NT.

5.1.2 Existing Grant

If Legal Aid NT 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 Legal Aid NT.

If Legal Aid NT 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:

(i) signs the charge;

(ii) provides a satisfactory explanation for not signing; or

(iii) asks Legal Aid NT to review its decision.

within 30 days of receiving the written notification.

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 Legal Aid NT as a debt due and payable to Legal Aid NT. In these circumstances any future application for legal aid may be refused.

7. Practitioner's Obligations

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

In all cases the practitioner should contact Legal Aid NT 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 their 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 Legal Aid NT before the balance, if any, is payable to the legally assisted person.

8. Contribution Tables

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 plus100% of assessable assets above $3,000C

Chapter 5
Criminal Law

Part 1 Northern Territory Criminal Law

1A. Circuit Court Matters

In assessing any application for aid for criminal matters consideration must be given to the availability of funds to cover the cost of the matter and the obligation of Legal Aid NT to ensure that legal assistance is provided in the most effective, efficient and economic manner.

Legal Aid for matters being heard in locations where Legal Aid NT does not have an office may not be available if Legal Aid NT does not have sufficient resources to attend to those matters in an efficient and cost-effective manner.

1B. Funding Restrictions

In assessing any application for aid for NT criminal matters consideration must be given to the availability of funds to cover the cost of the matter and the obligation of Legal Aid NT to ensure that legal assistance is provided in the most effective, efficient and economic manner.

1) From 17 November 2025, until further notice, no adult person is to be granted aid for a Northern Territory criminal law matter unless the applicant is in custody.
2) This general guideline overrides any specific guideline except where:
    a) arrangements are in place for the reimbursement of the cost of legal services
    b) a proceeding has been legally-aided and is part-heard or an extension of aid is otherwise justified in the circumstances.
    c) the applicant is a supervised person pursuant to Part IIA of the Criminal Code (NT) or faces proceedings pursuant to Part IIA of the Criminal Code.
    d) the in-house practice has capacity to represent the applicant and one or more of the following applies:
        i. The applicant faces a charge(s) that would usually be dealt with in the Supreme Court;
        ii. Exceptional circumstances exist which justify a grant of aid. Exceptional circumstances can include applicants who require an interpreter, have a significant mental illness or substantial cognitive impairment.

3) Where Legal Aid NT imposes a cap on the amount of money that can be committed for referred grants of aid in a month:

   a) Applications for aid for bail applications will be excluded from the cap and assessed as usual.

   b) Once the cap is reached, all other applications for aid will be refused and reconsidered the following month in the following order of priorities:

      i. Child clients
      ii. Any extension request where the work has been completed
      iii. New applications for aid
      iv. Extension requests in order of lodgement or court date as the circumstances require

1. Traffic Prosecutions

Legal aid is not normally granted in relation to prosecutions under the *Traffic Act (NT)* , even where there is a likelihood of a penalty of imprisonment, unless one or more of the following applies:

a) there are more serious charges pending on the same prosecution file;

b) the applicant is under 18 years of age; and/ or

c) there are particular circumstances relating to the applicant and/ or the matter.

2. Summary Criminal Prosecutions

Assistance will not normally be provided for hearings in the Local Court unless:

(a) the applicant has a reasonable prospect of acquittal; and

(b) conviction would be likely to result in the imposition of a term of imprisonment (including a suspended term) ; or

(c) the defendant suffers from a disability or a disadvantage which would prevent self-representation.

Assistance may be available for representation for a plea of guilty where for reasons of complexity or other aggravating circumstance the matter could not reasonably be expected to be dealt with through a duty lawyer service and the likely penalty is imprisonment.

Assistance will not be provided for minor matters involving nothing more than a small monetary penalty. Notwithstanding the foregoing, where in the opinion of the Director there are compelling reasons based on the public interest or other general priorities of Legal Aid NT for providing representation, assistance may be granted.

3. Committal Proceedings

3.1 Assistance will be provided for committal proceedings, in those cases where the charges cannot be determined summarily, or where Legal Aid NT is satisfied that there are compelling reasons for the matter to proceed by way of jury trial or plea in the Supreme Court.

3.2 Any assistance for oral committal proceedings (PEO) is subject to Legal Aid NT being satisfied that specific issues have been identified which can be clarified or resolved at committal and there is a reasonable likelihood that a substantial benefit will result from representation.

Such benefit may be that:

a) the applicant's case may in fact be dealt with summarily; or

b) a committal hearing is likely to identify an early plea; or

c) there is reasonable likelihood that the defendant will be discharged at the committal; or

d) a committal hearing may provide a forensic advantage in the conduct or the applicant's matter in the Supreme Court; or

e) the conduct of a committal is likely to lead to a significant reduction in the length of trial.

It should be noted that both the Northern Territory and Commonwealth Directors of Public prosecutions have adopted guidelines which require full pre-trial disclosure and accordingly a claim that the committal will merely provide an opportunity to discover the prosecution's case is not to be regarded as a substantial benefit.

3.3 Where it is considered appropriate to pursue a PEO, the prosecution do not consent to the cross examination of witnesses and therefore legal argument is required, assistance will be granted for a PEA.

3.4 In murder and other serious matters, assistance may be extended to engaging the counsel it is proposed to brief for the trial, to represent the accused at committal. In determining whether to authorise briefing counsel for the committal Legal Aid NT will have regard to the following matters:

a) the complexity and gravity of the charge;

b) the likelihood of representation by counsel at committal resulting in a resolution of issues which would otherwise remain alive at trial; and

c) the likelihood of counsel retaining the brief through to trial.

3.5 Subject to 3.1, assistance will normally be provided for a Preliminary Examination on the Papers (PEP) or Committal for sentence.

4. Criminal Trials and Pleas

Assistance will not normally be provided for a trial in the Supreme Court unless:

a) conviction would be likely to result in the imposition of a term of imprisonment (including a suspended term) and the applicant has a reasonable prospect of acquittal; or

b) conviction would be likely to result in the imposition of a term of imprisonment (including a suspended term) and there are reasonable prospects of being convicted of a less serious offence.

Despite the above, if a court orders an adjournment or stay of person's trial pursuant to a successful application based on Dietrich's case the Director will favourably consider a grant of aid.

Notwithstanding the foregoing, where in the opinion of the Director there are compelling reasons based on the public interest or other general priorities for Legal Aid NT for providing representation, assistance may be granted.

Assistance will normally be provided for a plea of guilty in the Supreme Court.

5. Appeals

Assistance will be granted for an appeal against conviction and/or sentence if there are reasonable prospects of quashing or overturning the conviction or of a material reduction in the sentence provided that, after applying a costs benefits analysis in all the circumstances, the cost of conducting such appeal is in the opinion of the Director justified.

6. Bail Applications

Assistance will normally be provided in respect of bail applications only where there is reasonable prospects of success in the application.

7. Applications Pursuant to *Dietrich's Case*

Assistance will not normally be provided for the purpose of an accused person conducting an application before a Court seeking, pursuant to the decision of the High Court in Dietrich's Case, an adjournment or stay of their case until legal representation is available and where, in the opinion of the Director, there is absolutely no defence at all, assistance will not be provided.

8. Commissions of Inquiry

Assistance will not normally be provided to appear before Royal Commissions or Boards of Inquiry, unless there are strong reasons, based on the public interest, for providing representation.

9. Costs Ceilings (Cap) Criminal Law

Wherever possible, Supreme Court matters expected to exceed the ceiling cap should be handled in-house.

Where a Supreme Court matter is referred to a private practitioner, for any one trial aid will be limited to $40,000.00 with an additional $20,000.00 for each co-accused. Allocation of funding between defendants is determined by Legal Aid NT.

The Director, or their delegate, has a discretion to grant aid on terms which would exceed the ceiling cap.

Part 2 Commonwealth Criminal Law

Note: The National Partnership Agreement on Legal Assistance Services provides for the Commonwealth Legal Aid Guidelines and Service Priorities for Criminal Law matters. Priority is to be given to Commonwealth Criminal Law matters that involve a grant of legal aid being provided to assist people facing Commonwealth criminal offences or undergoing Commonwealth criminal proceedings where the defendant is a child, or is a person who, if convicted, is likely to receive a sentence involving a period of imprisonment.

1. General

1.1 Assistance where Accused has Restrained Property

(1) Where the applicant for assistance is seeking a Grant of Legal Assistance to defend a criminal charge that is covered under the guidelines in this Part 3 and the applicant has property that is covered by a restraining order under the Proceeds of Crime Act 2002, the costs of providing legal assistance under a Grant will be reimbursed to Legal Aid NT in accordance with sections 292 and 293 of the Act.

(2) For the purposes of this Part 3, in assessing an applicant's eligibility under the means test, any of the applicant's assets that are covered by a restraining order or confiscation order under the Proceeds of Crime Act 2002 are to be disregarded.

1.2 Assistance for Illegal Fishing or People Smuggling Offences

Where the applicant for assistance is seeking a Grant of Legal Assistance for assistance with an illegal fishing offence under:

(a) Division 5 of Part 6 of the Fisheries Management Act 1991, or

(b) Part VI of the Torres Strait Fisheries Act 1984, other than an offence committed by a traditional inhabitant in the course of community fishing or traditional fishing, or

(c) a people smuggling offence under Subdivision A of Division 12 of Part 2 of the Migration Act 1958, or

(d) an offence ancillary to such illegal fishing or people smuggling offence due to the operation of Part 2.4 of the Criminal Code Act 1995 (Cth),

Legal Aid NT may only make a Grant if:

(a) Legal Aid NT considers that if the Grant is not made a court may stay the prosecution in accordance with the High Court's decision in Dietrich's case1, or such a stay has been ordered by a court, and/or

(b) Legal Aid NT considers that the 'interests of justice' requirement under Article 14(3) of the International Covenant on Civil and Political Rights would require that assistance be granted to the applicant.

Note: 'Traditional inhabitant', 'traditional fishing' and 'community fishing' are defined terms in the Torres Strait Fisheries Act 1984.

The 'interests of justice' will be determined based on the circumstances of each case. Examples of 'interests of justice' considerations include:

(a) whether assistance is indispensable for effective access to the court

(b) the need to develop appropriate arguments on complicated legal issues or the complexity of the procedure

(c) the seriousness of the consequences, and

(d) the capacity of the unrepresented defendant to present a legal argument, including the defendant's language abilities.

2. Summary Criminal Prosecutions

2.1 Assistance for Trials in Magistrates or Local Courts

Legal Aid NT may make a Grant of Legal Assistance for a criminal law trial in a State or Territory magistrates or local court if the applicant for assistance has a reasonable prospect of acquittal, and:

(a) conviction would be likely to have a significantly detrimental effect on the applicant's livelihood or employment (current or prospective)

(b) it would be unreasonable to expect the applicant to adequately represent due to special circumstances of a kind listed in the Commonwealth Legal Aid Priorities

(c) conviction would be likely to result in the applicant receiving a term of imprisonment, including a suspended term, or

(d) the applicant is a child.

2.2 Assistance for Guilty Pleas

Legal Aid NT may make a Grant of Legal Assistance for a plea of guilty in a criminal law matter if, because of the complexity of the matter or any other aggravating

1 1 Dietrich v The Queen (1992) 177 CLR 292

circumstance, Legal Aid NT determines that the matter should not be dealt with by a Duty Lawyer Service.

Example

An aggravating circumstance may be:

- *a likelihood that a lengthy term of imprisonment may be imposed*
- *a disability or disadvantage of the applicant, such as a language difficulty.*

3. Committal Proceedings

3.1 Assistance for Committal Proceedings

(1) Legal Aid NT may make a Grant of Legal Assistance for committal proceedings if:

(a) the proceedings are likely to contribute to reducing the duration and cost of any subsequent proceedings, or

(b) it would be unreasonable to expect the applicant for assistance to adequately self-represent due to special circumstances of a kind listed in the Commonwealth Legal Aid Priorities.

Note: Special circumstances are set out in subclause paragraph 6.7.2 of the Agreement.

(2) A Grant of Legal Assistance under this guideline 3 may be made for:

(a) preparing for, or appearing at, a pre-hearing conference or committal hearing

(b) identifying issues not in dispute between the parties, or

(c) resolving issues in negotiation with the Commonwealth Director of Public Prosecutions.

Note: The aim of this guideline is to ensure that all material issues are identified as early as possible to reduce the duration and cost of subsequent court proceedings. The fact that the committal hearing may result in the Prosecution having to disclose material aspects of its case is not intended to advantage the applicant for assistance over the Prosecution.

4. Superior Court Criminal Prosecutions

4.1 Assistance for Superior Court Criminal Proceedings

Legal Aid NT may make a Grant of Legal Assistance for superior court criminal proceedings for:

(a) assistance for a plea of guilty

(b) assistance to present a specific defence argument, or

(c) any other form of assistance that Legal Aid NT considers appropriate in the circumstances.

4.2 Assistance for Charges on Indictment

Legal Aid NT may only make a Grant of Legal Assistance for the hearing of charges on indictment where:

(a) the applicant for assistance's charges are being heard on indictment, at the election of the applicant, and

(b) the charges would normally be heard summarily

if Legal Aid NT is satisfied, on the information it has been given, that there are compelling reasons as to why the charges will be heard on indictment.

5. Youth Justice Court Proceedings

5.1 Assistance for Proceedings in Youth Justice Courts

Legal Aid NT may make a Grant of Legal Assistance for criminal law matters in a Youth Justice Court.

6. Bail Applications

6.1 Assistance for Bail Applications

(1) Legal Aid NT may make a Grant of Legal Assistance for bail applications in relation to criminal law matters only if:

(a) bail is opposed by the Prosecution and, on the information provided, it is likely that bail will be granted by the court, or

(b) the applicant for assistance seeks to respond to a court application for revocation of bail.

(2) This guideline 6 applies to bail applications regardless of whether a Grant of Legal Assistance is made:

(a) as part of a Grant of Legal Assistance for the matter generally, or

(b) independently of a Grant of Legal Assistance for other elements of the matter but does not apply to matters handled by the Duty Lawyer Service.

7. Applications Arising from the Decision in Dietrich 's Case

7.1 Assistance for Applications Based on Decision in *Dietrich's Case*

(1) Legal Aid NT should not normally make a Grant of Legal Assistance to an applicant for assistance who is an accused person to conduct an application seeking, on the basis of the High Court's decision in *Dietrich's Case*, an adjournment or stay of the case against the applicant until legal representation is available.

(2) Legal Aid NT should not make a Grant of Legal Assistance for proceedings under section 360A of the *Crimes Act 1958'*(Vic).

8. National Security Matters

8.1 Requirement for Security Clearance

(1) Subject to guideline 9.1(2), Legal Aid NT may only make a Grant of Legal Assistance for a matter relating to Australia's national security, if the representatives hold, or obtain before the Grant is made, security clearances at the appropriate level.

(2) If an applicant for assistance's representatives do not hold security clearances at the appropriate level when the application for a Grant of Legal Assistance is made, assistance may be provided under this guideline 9 only if:

(a) the matter is an urgent matter

(b) access to information relating to national security is not required for the proper conduct of the applicant's case, and

(c) lack of representation may seriously prejudice the applicant's interests.

Example

The applicant would be unrepresented in making a bail application, or the court might stay the matter until representation could be arranged

(3) The Commonwealth Minister, or their delegate, may determine at the request of the Commonwealth or Legal Aid NT and for the purposes of this guideline 9 whether a matter is or is not a matter relating to Australia's national security.

9. Appeals

9.1 Appeals against Criminal Conviction or Sentence

Legal Aid NT may make a Grant of Legal Assistance to an applicant for assistance to appeal against a court conviction or sentence in a criminal law matter if the matter is eligible for assistance under another guideline in this Part 3, and:

(a) there is a strong likelihood that the appeal will result in the applicant's conviction being quashed or sentence materially reduced, or

(b) Legal Aid NT determines that the appeal involves an important or complex question of law.

9.2 Response to Crown Appeals

(1) Legal Aid NT may make a Grant of Legal Assistance to respond to a Crown appeal, Crown reference or case stated.

(2) Legal Aid NT may make a Grant of Legal Assistance under this guideline 10.2 without regard to the merits test.

Part 3 Criminal Law Costs Management

1. Matters Involving Commonwealth and State or Territory Law

(1) Legal Aid NT may make a Grant of Legal Assistance to an applicant for assistance who has been charged with breaches of both Commonwealth and State or Territory criminal laws.

(2) However, for such Grants of Legal Assistance:

(a) Commonwealth Legal Aid Monies must be used if, in the nature of the charges and the course of the hearing, the matter is essentially a Commonwealth criminal law matter

(b) State or Territory funds must be used if, in the nature of the charges and the course of the hearing, the matter is essentially a State or Territory criminal law matter, and

(c) if there is a substantial mix of Commonwealth and State or Territory criminal law charges, Commonwealth and State or Territory funds must be used proportionately, as determined by Legal Aid NT.

(3) For guideline 7.1(2)(a), a matter that is prosecuted by the Commonwealth Director of Public Prosecutions is taken to be essentially Commonwealth.

2. Limitation on costs

2.1 Funding where costs exceed $40,000

(1) If the costs to Legal Aid NT of a Grant of Legal Assistance for any one criminal law trial are likely to exceed $40,000, Legal Aid NT must consider whether it is possible to contain costs by:

(a) providing legal assistance for the matter in-house, or

(b) determining whether any alternative means of funding, which are subject to strict limits in order to contain costs, are appropriate, including funding that may not be in accordance with Legal Aid NT's usual fee scales.

Example

Legal Aid NT may try to negotiate a fee package for a matter that is settled in advance with a legal practitioner who is an External Service Provider.

(2) If Legal Aid NT does not consider it can fund a criminal law trial without significantly impacting on its ability to provide assistance in other

Commonwealth Law Matters in accordance with the Agreement, it may make an application to the Commonwealth Criminal Law - Expensive Cases Fund.

2.2 Legal Aid NT must Provide Quarterly Reports

The Northern Territory Liaison Officer must provide a quarterly report to the Commonwealth Liaison Officer in relation to criminal law matters in which the Grant of Legal Assistance exceeds $40,000, though Legal Aid NT need not supply names or other information that might identify the applicants.

3. Commonwealth Criminal Law - Expensive Cases Fund

3.1 Purpose of Fund

The Commonwealth Criminal Law— Expensive Cases Fund (the Fund) has been established to assist Commissions to cater for high, one-off costs associated with providing assistance for a particular criminal law matter.

3.2 Administration of Fund

(1) The Fund is administered by the Attorney-General's Department and the allocation of funds from the Fund is at the discretion of the Department.

(2) In determining an application for an allocation from the Fund, the Attorney-General's Department must have regard to:

(a) the circumstances of the application

(b) the likely impact that approval of the application will have on the resources of the Fund, and

(c) other applications to the Fund.

3.3 Application for Funds

(1) An application to the Attorney-General's Department for an allocation from the Fund may only be made by Legal Aid NT.

(2) A separate application must be made to the Attorney-General's Department for each criminal law matter for which an allocation from the Fund is sought by Legal Aid NT.

(3) Cases for which an application may be made include:

(a) cases where a potential stay of a Crown criminal prosecution may be granted in accordance with the High Court's decision in Dietrich 's case

(b) criminal conspiracy cases

(c) criminal cases arising under the Corporations Act 2001

(d) drug importation cases, or

(e) a class of criminal cases that are similar in nature to each other.

Note: Guidelines 12.3(3)(a) to (d) are examples, and not an exhaustive list, of the types of matters that the Commonwealth is prepared to consider for applications for allocations from the Fund.

(4) An application may be made before commencement of criminal law proceedings, or at any time during proceedings.

(5) Legal Aid NT must include sufficient information in an application to satisfy the Attorney-General's Department that:

(a) the likely cost of the case is high, and is likely to significantly affect the capacity of Legal Aid NT to provide assistance for other Commonwealth Legal Aid Priorities

(b) in estimating the likely cost of the case, Legal Aid NT consulted with the Commonwealth Director of Public Prosecutions about the likely direction of the trial

(c) Legal Aid NT has taken or will take all necessary steps to manage the case in accordance with guideline 11 of this Part 3

(d) Legal Aid NT has made a reasonable estimate of likely expenditure on the case for the relevant Financial Year

(e) there is potential for a court to grant a stay of the matter in accordance with Dietrich 's case if funds are not allocated from the Fund for the case

(f) Legal Aid NT does not hold Commonwealth Legal Aid Monies in excess of the Allowed Surplus which are available to fund the matter, and

(g) before the date of Legal Aid NT's application, Legal Aid NT has been managing its funding in accordance with the Agreement.

3.4 Terms and Conditions of Allocations from the Fund

An allocation from the Fund may be made on any terms and conditions that the Attorney-General's Department considers appropriate, including that:

(a) Legal Aid NT must provide the Commonwealth with the following reports:

(i) at the end of each Financial Year, a report of the expenditure of funds allocated to Legal Aid NT from the Fund, and

(ii) at the completion of each matter for which funds have been allocated to Legal Aid NT from the Fund, a report of the expenditure of those funds, and

(b) on the completion of a matter, any funds allocated from the Fund to Legal Aid NT for a particular matter but not spent on providing legal assistance for that matter must be returned to the Commonwealth, unless otherwise directed in writing by the Commonwealth.

Chapter 6
Family Law

Part 1 Family Law Guidelines

Note: The National Partnerships Agreement on Legal Assistance Services provides for the Commonwealth Legal Aid Guidelines and Service Priorities for Family Law matters. These priorities, in no hierarchical order, are Family Law matters that involve a grant of legal aid being provided to assist:

a) children, including the appointment of a court appointed independent children's lawyer;

b) people who have experienced, are experiencing or are at risk of experiencing family violence;

c) family members resolve complex issues relating to the living arrangements, relationships and financial support of their children; and

d) State/ Territory law matters in which a child's safety or welfare is at risk, and there are other connected family law priorities for which a grant of assistance could be made.

1.1 Priority for Urgent matters

(1) Although each of the family law priorities in the Commonwealth Legal Aid Service Priorities are generally of equal priority, in deciding whether to make a Grant of Legal Assistance for a family law matter in relation to an application to the court for an interim order or injunction, Legal Aid NT will give the highest priority to urgent matters.

(2) Urgent matters are matters in which Legal Aid NT determines that:

(a) a child's safety or welfare is at risk;

(b) the applicant's safety is at risk;

(c) there is an immediate risk of removal of a child from Australia or to a remote geographic region within Australia;

(d) there is a need to preserve matrimonial property; and/ or

(e) other exceptional circumstances exist that require urgent legal assistance.

1.2 Non-urgent matters

(1) If Legal Aid NT determines that a family law matter that falls within the family law priorities is not urgent, a Grant of Legal Assistance should not be granted until the relevant parties have been separated for a sufficient period of time to enable them to be sure that there are real issues in dispute.

(2) Guideline 1.2(1) does not apply where Legal Aid NT considers that a non-urgent matter warrants a Grant of Legal Assistance for an application to the court for an interim order or injunction prior to the passing of the sufficient period of time referred to in guideline 1.2(1).

In prioritising funds available for non-urgent matters and deciding whether a Grant of Legal Assistance is to be made and if so, the nature and extent of that Grant, Legal Aid NT may take into consideration whether:

a) there is, or is a likelihood of, domestic violence, especially if an allegation of domestic violence has been made;

b) concerns as to the safety, welfare and psychological wellbeing of a child have been identified and require further investigation;

c) the applicant has a language or literacy problem;

d) the applicant has an intellectual, psychiatric or physical disability;

e) it is difficult for the applicant to obtain legal assistance because the applicant lives in a remote location; and

f) the child/children are Aboriginal or Torres Strait Islander as defined under section 4 of the *Family Law Act* 1975.

Part 2 Family Dispute Resolution (FDR) Services

2.1 Consideration of resolution processes other than litigation

(1) In a family law matter under this Part 2, Legal Aid NT must consider making a Grant of Legal Assistance for an applicant for assistance to participate in FDR Services before it considers making a Grant of Legal Assistance to that applicant for Litigation Services at any stage in the proceedings.

2.2 Appropriateness of participation in FDR Services

(1) Legal Aid NT will only make a Grant of Legal Assistance requiring an applicant to participate in FDR Services if it considers that this is appropriate in the particular case. Participation in FDR Services is usually inappropriate where:

(a) the matter is considered to be an urgent matter under guideline 1.1 of this Part 2;

(b) for family law matters relating to a child of the parties, there are any current reported allegations of child abuse or risk, or investigations or court proceedings relating to child abuse are currently taking place;

(c) a party's safety or ability to negotiate effectively is jeopardised by behaviour of the other party such as violence, intimidation, control or coercion, or a history of such behaviour; and/or

(d) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason).

Part 3 Independent representation of children

3.1 Assistance for independent representation of children's interests

(1) Legal Aid NT may make a Grant of Legal Assistance for the independent representation of children's interests in court proceedings if:

(a) a court makes an order for that the child's interests be independently represented by a lawyer and asks Legal Aid NT to arrange for a lawyer to provide the independent representation, and

(b) Legal Aid NT decides that it is reasonable to provide a Grant of Legal Assistance for the independent children's lawyer.

Note A court order that an independent children's lawyer be appointed in a matter does not impose an obligation on Legal Aid NT to make a Grant of Legal Assistance for the independent representation.

(2) Legal Aid NT should make a Grant of Legal Assistance for the independent representation of a child's interest in any court proceedings relating to special medical procedures (including sterilisation).

(3) An application for a Grant of Legal Assistance under this guideline 3.1 is not subject to the means test.

3.2 Payment for the costs of independent representation by a party not receiving legal assistance

(1) If Legal Aid NT makes a Grant of Legal Assistance for an independent children's lawyer, Legal Aid NT must give consideration as to the ability of the parties to the proceedings to:

(a) contribute to the costs associated with a single expert report; and/ or

(b) contribute to the costs and disbursements associated with the Grant of Legal Assistance for the independent children's lawyer.

(2) Legal Aid NT may determine an amount to be paid by each party taking into account:

a) The party's capacity to pay;

b) The party's legally aided status; and/ or

c) Contributions assessed on existing files.

(3) Taking into account that the parties are equally liable to pay a single expert witness's reasonable fees and expenses incurred in preparing a report (*Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, rule 7.06) ordinarily, if a party is unaided, they will be required to contribute to an equal portion of the cost of the single expert.

(4) Guideline 3.2(1) does not apply to proceedings relating to special medical procedures involving a child in which a Grant of Legal Assistance for independent representation of the child's interest has been made, regardless of whether or not any of the parties to the proceedings are receiving legal assistance under a Grant of Legal Assistance.

(5) If a party refuses or fails to pay the amount required by Legal Aid NT under this guideline 3.2, legal assistance for the independent children's lawyer should continue to be provided on the condition that the independent children's lawyer in appropriate circumstances seek an order for costs against that party at an appropriate time in the court proceedings.

Part 4 Parenting Orders

4.1 Assistance for parenting orders

Legal Aid NT may make a Grant of Legal Assistance for a court application for a parenting order under the *Family Law Act 1975* if Legal Aid NT is satisfied that:

(a) There is a dispute about a substantial issue, and

(b) Any of the following circumstances apply:

(i) the party has a certificate under section 60I of the *Family Law Act* 1975 in relation to the dispute

(ii) participation in FDR Services is inappropriate in accordance with guideline 2 of this Part 2.

4.2 Assistance for applications to discharge or vary parenting arrangements

(1) Subject to guideline 4.2(2), Legal Aid NT may make a Grant of Legal Assistance for a court application to discharge or vary a parenting order or to set aside a registered parenting plan under the *Family Law Act 1975* if Legal Aid NT is satisfied that:

(a) there is a dispute about a substantial issue,

(b) any of the following circumstances apply:

(i) the party has a certificate under section 60I of the *Family Law Act* 1975 in relation to the dispute

(ii) participation in FDR Services is inappropriate in accordance with guideline 2 of this Part 2, and

(c) any of the following circumstances apply:

(i) there has been a substantial change in circumstances since the parenting order was made or the parenting plan was registered, and

(ii) in all the circumstances, it is in the child's best interest for the final parenting order to be reconsidered having regard to s 65DAAA of the *Family Law Act 1975* (Cth).

Examples

1. The likelihood of violence, or physical or mental harm, to the applicant or a child.

2. *The removal or risk of removal of a child from an applicant who has primary residence responsibilities.*

3. *The removal or risk of removal of a child from the jurisdiction of the Court.*

4. *The need for an applicant with primary residence responsibilities to move permanently overseas, interstate or elsewhere with a child, if consent is unreasonably refused by another person.*

(2) If the significant change in circumstances referred to in guideline 4.2(1)(c)(i) has been caused by the applicant for assistance, Legal Aid NT must consider the circumstances surrounding that change in determining whether it is appropriate to make a Grant of Legal Assistance to the applicant.

4.3 Assistance to parties who are not parents

(1) Legal Aid NT may make a Grant of Legal Assistance to a party who is not a parent in court proceedings relating to a parenting order under the Family Law Act 1975 if:

(a) the party is significant to the care, welfare and development of the relevant child, or

(b) Legal Aid NT considers it to be in the child's best interests.

Example

It may the in the child's best interests if the child's safety or welfare is at risk.

(2) Notwithstanding 4.1(a) above, in circumstances where a child protection authority is involved and is supportive of the third party, Legal Aid NT may grant aid to the extent necessary to secure the child's best interests.

4.4 Assistance where care and protection proceedings

Legal Aid NT may make a Grant of Legal Assistance for a court application for a parenting order under the Family Law Act 1975 even if there are current care or protection orders in force under a State or Territory law, or court proceedings under a State or Territory child welfare law are currently taking place, in respect of the child provided the family law parenting orders are sought to commence upon the expiration or discharge of any child protection order and / or consent has been obtained from the child welfare agency for the commencement of proceedings under Part VII of the *Family Law Act, 1975* (Cth).

4.5 Parentage

(1) Legal Aid NT may make a Grant of Legal Assistance to an applicant for the purpose of determining a parentage dispute, including the provision of funding for parentage testing.

(2) If a male applicant for assistance denies he is the father of the relevant child, Legal Aid NT should not make a Grant of Legal Assistance unless the applicant gives Legal Aid NT adequate reasons to support the denial and agrees to submit to parentage testing.

(3) Assistance may only be provided if the finding in relation to parentage is necessary for the determination of the substantive proceedings or for the purposes of financial support of a child by way of child support.

(4) A Grant of Legal Assistance for parentage testing should only be made on the condition that steps are taken to seek recovery of the costs of the testing where appropriate.

4.6 Special Medical Procedures involving Children

(1) Legal Aid NT should make a Grant of Legal Assistance to the parents of a child in any court proceedings relating to special medical procedures (including sterilisation) involving the child.

(2) An application for a Grant of Legal Assistance under this guideline 9 is not subject to the merits test.

4.7 Recovery, location and information orders

(1) Legal Aid NT may make a Grant of Legal Assistance for proceedings under the *Family Law Act 1975* (Cth) for a recovery, location and/or information order relating to the location and/or recovery of a child.

(2) A Grant of Legal Assistance under this guideline 10:

(a) should usually be limited to $2,000, and

(b) should only be made on the condition that the applicant for assistance seek a costs order against the respondent to the court application, unless that party is also receiving legal assistance under a Grant of Legal Assistance and in consideration of s 117 of the *Family Law Act 1975* (Cth).

Part 5 Property and Financial Orders

5.1 Assistance for certain property settlement disputes under the Family Law Act 1975 or the Family Court Act 1997 (WA)

(1) Legal Aid NT may make a Grant of Legal Assistance for the resolution of a property dispute under the Family Law Act 1975 or the Family Court Act 1997 (WA) only if:

(a) the estimated equity in the disputed property is more than $20,000;

(b) Legal Aid NT is satisfied from the material provided to it that the separation of the parties is final; and

the dispute relates to:

(i) property and/or

(ii) funds from which the applicant for assistance may receive only a deferred benefit, such as superannuation benefits.

(2) Ordinarily a Grant of Legal Assistance will only be granted for the resolution of the dispute through participation in a Legal Aid NT FDR service.

(3) A Grant of Legal Assistance for litigation for a dispute about property may only be made if the applicant for assistance is also seeking the resolution of another related family law matter by the court or Legal Aid NT decides that it is appropriate to make a Grant of Legal Assistance to the applicant for assistance because of their personal circumstances.

5.2 Urgent Injunctive Relief

Where the dispute relates to the preservation of property and there is a risk that property will be disposed of then a limited Grant of Legal Assistance may be made for injunctive relief.

5.3 Lawyer-Assisted Family Law Property Mediation Trial

(1) Legal Aid NT may make a Grant of Legal Assistance under the Lawyer-Assisted Family Law Property Mediation Trial only if the matter is a priority matter under Chapter 6, Part 1, Guideline 1 and:

(a) the estimated net property pool in the disputed property is not more than $500,000 excluding superannuation;

(b) Legal Aid NT is satisfied from the material provided to it that the separation of the parties is final; and

(c) the dispute relates to:

(i) property and/or

(ii) funds from which the applicant for assistance may receive only a deferred benefit, such as superannuation benefits.

(2) Ordinarily a Grant of Legal Assistance will only be granted for the resolution of the dispute through court when:

(a) the merit test outlined at Chapter 1, Part 3, Guideline 6 is met;

(b) it is likely the further grants will resolve the dispute; and

(c) the applicant has shown commitment to the early resolution of the dispute.

(3) A grant of legal assistance will not normally be granted when the disputed property pool includes overseas property and/or complex financial arrangement such as businesses and family trusts.

Part 6 Child Maintenance and Child Support

The Grant of Legal Assistance under Guideline 5 should usually be limited to administrative remedies under the child support legislation, and proceedings in State or Territory magistrates or local courts or the Federal Circuit and Family Court of Australia, unless such proceedings are unavailable.

6.1 Assistance for child support matters

Legal Aid NT may make a Grant of Legal Assistance in relation to the *Child Support (Assessment) Act 1989* or *Child Support (Registration and Collection) Act 1988*.

6.2 Administrative Appeals Tribunal (AAT) review of Child Support Agency decisions

Legal Aid NT may make a Grant of Legal Assistance in relation to:

(a) Appeals under the child support legislation to the AAT for review of a Child Support Agency decision; or

(b) An appeal under the child support legislation to a Court on a question of law from a decision of the AAT;

if Legal Aid NT considers that circumstances exist that affect the person's ability to adequately self-represent.

6.3 Assistance for child maintenance matters

Legal Aid NT may make a Grant of Legal Assistance in relation to a child maintenance matter under the *Family Law Act 1975* (Cth), in order to

(1) apply for, or respond to, an application for a child maintenance order (including an adult child maintenance order),

(2) apply for or respond to an application to vary a child maintenance order or agreement.

6.4 Assistance for applicant children

Legal Aid NT may make a Grant of Legal Assistance to a child, (including an adult child), seeking a child maintenance order.

6.5 Application of Part 2 to the maintenance of ex nuptial children in Western Australia

1. A grant of Legal Assistance may be made for a matter in Western Australia involving the maintenance of an ex nuptial child only if the matter is provided for by the child support legislation as it extends to Western Australia

2. This Part, and any amendments to this Part, apply to a matter in Western Australia involving the maintenance of an ex nuptial child in the same way that the child support legislation, and any amendments to the child support legislation, apply to the matter.

Note: see section 13 of the Child Support (Assessment) Act 1989 and section 5 of the Child Support (Registration and Collection) Act 1988.

6.6 Assistance for applications for spousal maintenance

Legal Aid NT may make a Grant of Legal Assistance in relation to a spouse maintenance matter under the Family Law Act 1975 or the Family Court Act (WA) 1997, in order to:

(1) apply for, or respond to, an application for a spouse maintenance order; or

(2) apply for or respond to an application to vary a spouse maintenance order.

Legal Aid NT should be satisfied that:

(a) the applicant for assistance cannot obtain the order by consent, and

(b) the applicant for assistance cannot adequately prepare or defend the court application without legal assistance, and

(c) the applicant for assistance cannot obtain appropriate legal assistance from another source.

6.7. Assistance for proceedings for arrears of maintenance or child support

Legal Aid NT may make a Grant of Legal Assistance to negotiate or prepare court proceedings for payment of arrears of child support, or spousal or child maintenance if:

(a) (i) the applicant for assistance cannot adequately prepare the court application or present the case to the court without legal assistance, and

(ii) appropriate legal assistance cannot be obtained from another source,

or

(b) the applicant for assistance is also seeking the resolution of another family law matter by the court.

Part 7 Divorce and nullity of marriage

Legal Aid NT will not make a Grant of Legal Assistance to an applicant for assistance for a court application relating to divorce or nullity of the person's marriage unless special circumstances exist and certain aspects of the court application have a complexity warranting legal assistance, and because of this complexity it would not be reasonable to expect the applicant for assistance to conduct the proceedings.

Example

The following types of cases may warrant a Grant of Legal Assistance:

- difficulties in proving the marriage
- a need to obtain recognition of an overseas dissolution
- a need for substituted service, or
- a need to dispense with service of the application.

Part 8 Assistance where orders exist

8.1 Assistance for appeals

(1) Legal Aid NT may make a Grant of Legal Assistance for an appeal in relation to a family law or child support order, including for the participation of an independent children's lawyer in an appeal, only if the matter is eligible for assistance under another guideline in this Part 2.

(2) Legal Aid NT must take the provisions of the *Federal Proceedings (Costs) Act 1981* (Cth) into account before making a Grant of Legal Assistance under this guideline 14.

8.2 Assistance for enforcement proceedings

(1) Legal Aid NT may make a Grant of Legal Assistance for court proceedings to enforce a final or interim court order relating to a family law or child support matter.

(2) A Grant of Legal Assistance under this guideline 15:

(a) should usually be limited to $2,000, and

(b) should only be made on the condition that the applicant for assistance seek a costs order against the respondent to the court application, unless that party is also receiving legal assistance under a Grant of Legal Assistance.

8.3. Contempt of court and breach of court orders

Assistance for contempt of court or contravention of court orders Legal Aid NT may make a Grant of Legal Assistance to an applicant for assistance in relation to a family law or child support matter, to be dealt with for:

(a) contempt of court, or

(b) contravention of an order of the court.

Where the applicant is a respondent to court proceedings, in determining whether to grant assistance, Legal Aid NT should have regard to the severity of any penalty to which the person is likely to be subject.

Part 9 International child abduction matters

(1) Legal Aid NT may make a Grant of Legal Assistance to an applicant for assistance to:

(a) defend an application to the court under the Hague Convention on the Civil Aspects of International Child Abduction (the Convention) for:

(i) the return of a child who has been removed from a convention country to, or retained in, Australia, or

(ii) access to a child who is living in Australia

(b) make an application to the court under the Family Law (Child Abduction Convention) Regulations 1986 for a declaration that the removal of a child from Australia to a convention country, or the retention of a child in a convention country, is wrongful within the meaning of the Convention

(c) make an application to the court under a bilateral agreement in relation to a child who has been wrongfully removed to Australia.

(2) A Grant of Legal Assistance is not available to an applicant for assistance to intervene in proceedings relating to the return of a child under the Convention.

Part 10 Family law costs management

10.1 General

(1) In this guideline 18:

a family law or child support matter includes any dispute that involves the same parties about the same or substantially the same issue, if there has not been a material change in circumstances or if any such change would not materially affect existing orders

costs cap means the costs limitations on a Grant of Legal Assistance as set out in guidelines 4.6, 8.2 and 10.2 of this Part 2, and

costs of a matter means the total costs paid by Legal Aid NT in a family law or child support matter in which a Grant of Legal Assistance has been made (taking into account the costs paid by any other legal aid commission, if the matter has been transferred from one or more of the States or Territories), including counsels fees, fees for expert reports and other disbursements (except interpreter and translator fees, rural travel and accommodation costs), less any Contributions collected by Legal Aid NT from the Legally Assisted Person and any Costs Recovered by Legal Aid NT.

(2) Legal Aid NT should treat the following proceedings as a new matter for the purposes of the Family Law Costs Management Methodology:

(a) recovery, location and/or information order relating to the location and/or recovery of a child;

(b) appeals;

(c) enforcement proceedings.

(3) The costs management principles in this guideline 18 apply to all Grants of Legal Assistance made by Legal Aid NT for family law matters.

10.2 Limit on costs

(1) Under a Grant of Legal Assistance, payment of the costs of a matter under Legal Aid NT's usual fee scales for a party in a family law or child support matter regardless of whether legal assistance in the matter is provided in-house by Legal Aid NT or by an External Service Provider, is limited to $22,000.

(2) The limit on costs does not apply to Grants of Legal Assistance to independent children's lawyers.

10.3 If costs likely to exceed limit

(1) Subject to guideline 10.3(2), (3) Legal Aid NT may increase the costs cap for a particular Grant of Legal Assistance if, in its opinion, undue hardship would otherwise be caused to an applicant, having regard to the following factors:

(a) whether the applicant for assistance has incurred significant additional costs due to circumstances of a kind listed in guideline 1.2(3).

(b) whether it would be unreasonable to expect the applicant for assistance to adequately self-represent due to circumstances of a kind listed in guideline 1.2(3).

(c) whether the costs of the applicant for assistance have increased significantly through no fault of the applicant

(d) the number and complexity of issues in dispute

(e) the likelihood of risk to a child's safety or welfare.

(2) Before making a decision under guideline 10.3(1), Legal Aid NT will have considered whether it is possible to contain costs by:

(a) providing legal assistance for the matter in-house, or

(b) considering whether alternative means of funding are appropriate, including negotiating a fee package that is not in accordance with Legal Aid NT's usual fee scales with an External Service Provider.

(3) Any decision made by Legal Aid NT under guideline 18.3(1) to increase the costs cap for a particular Grant of Legal Assistance should be subject to strict limits on costs, and the nature and extent of the additional cost will be determined by Legal Aid NT or agreed between Legal Aid NT and the External Service Provider (as appropriate) having regard to the following factors:

(a) advice from the court and the parties about the estimated length of time required for the hearing of the matter

(b) the number and nature of witnesses who must be called or cross-examined, and

(c) whether the other parties to the matter have legal representation.

Chapter 7
Civil Law

Part 1 Northern Territory Civil Law

Applications for aid for civil matters are subject to the availability of funds to cover the cost of the assistance or matter and the obligation of Legal Aid NT to ensure that legal assistance is provided in the most effective, efficient and economic manner.

Guideline 1. Legal Assistance may be Granted in the Following 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) Proceedings under the *Mental Health and Related Services Act*. Assistance is available but is generally confined to the provision of duty lawyer services.

(e) Subject to Guideline 3 Common Law Personal Injuries claims in limited circumstances.

(f) Subject to Guideline 4 proceedings under the *Criminal Property Forfeiture Act* 2002 (NT).

(g) Applications under the *Family Provision Act* (NT) 1980.

(h) Anti-discrimination Cases brought in the NT 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.

(i) Decisions or actions by Government authorities which are likely to have a significant adverse impact if not resolved. Assistance in relation to judicial review proceedings may only be granted where all available non-litigation avenues for resolution have been considered.

(j) Respondents in Care and Protection proceedings under the *Care and Protection of Children Act* 2007 in the Local Court.

Guideline 2. Legal Assistance is not Usually Granted in the Following Matters

(a) Matters where it is not essential that the applicant have the assistance of a lawyer such as claims which may be dealt with by the Northern Territory Civil and Administrative Tribunal (NTCAT) or in some other forum outside the Tribunal and Court system or where assistance is available to the applicant through their trade union or some other body;

(b) Conveyancing and deceased estates unless:

  (i) conveyancing proceedings are necessary or ancillary part of the proceedings for which assistance has been provided, e.g., where assistance was granted for family law proceedings which resulted in an Order for transfer of the family home to the assisted person.

  (ii) it appears for compassionate or social reasons that there is an immediate need for the finalisation of the deceased's affairs and there are insufficient assets in the estate out of which legal costs can be paid.

(c) Disputes within organisations e.g. unions, associations, clubs, religious organisations etc., unless the applicant would suffer extreme hardship in the nature of loss of livelihood or property if assistance was refused;

(d) Commercial, business or body corporate disputes;

(e) Motor vehicle property damage and minor civil and contractual disputes;

(f) Defamation proceedings;

(g) Adult guardianship applications.

Guideline 3. Civil Matters Generally

Assistance will be limited initially to an investigation of merits of the applicant's case.

Normally, further assistance will only be provided where:

(a) the applicant has reasonable prospects of success; and

(b) there are reasonable prospects of recovering from the other party the amount of any judgment or costs order; and

(c) 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 Legal Aid NT will weigh the benefit that the applicant is likely to derive against the estimated cost to Legal Aid NT of providing that assistance.

Where assistance is granted to an applicant to enable them to bring or defend a proceeding, the applicant should assume that if they derive any financial benefit from the proceeding they will most likely be required to repay to Legal Aid NT the ordinary professional costs of the legal services provided.

Guideline 4. Matters under the Criminal Property Forfeiture Act 2002 (NT)

Subject to the NT Guidelines for Civil Law Matters and the following, limited assistance may be available for proceedings under the *Criminal Property Forfeiture Act* to assist in restrained property being released for the purposes of the respondent being able to fund their own legal assistance:

(a) Where the value of the property which is the subject of the proceedings exceeds the likely cost of providing assistance;

(b) Where disclosure of an accused person's defence to criminal proceedings is likely to be required provided that assistance in these circumstances will normally be limited to an application for a stay of proceedings under the *Criminal Property Forfeiture* Act until the related criminal proceedings are resolved;

(c) Normally, the application will be reassessed after disposition of the criminal proceedings;

(d) Where assistance is granted in proceedings under the *Criminal Property Forfeiture Act*, the assisted person will:

  (i) execute an equitable charge (and in the case of real estate a charge in registrable form) in favour of Legal Aid NT to secure repayment of the cost of assistance;

  (ii) instruct their solicitor to seek an order that funds to be paid or released to the assisted person be paid into the solicitor's trust account from which the amount of the cost of the assistance is to be disbursed to reimburse Legal Aid NT prior to any release of the balance of the assisted person.

(e) A solicitor will not be approved to represent an assisted person in proceedings under the *Criminal Property Forfeiture* Act unless he/she has first obtained instructions from the assisted person (his/her client) to seek

an order that any amount awarded the assisted person be made out and deposited into the solicitor's trust account.

Part 2 Domestic Violence Orders & Personal Violence Restraining Orders

4.1 Applicants and Protected Persons

4.1.1. Legal assistance will not generally be granted to protected persons for assistance with Domestic Violence Orders. Protected persons should usually be able to obtain assistance through Police or other legal services. For example the Domestic Violence Legal Service services clients in the Darwin region, NAAFVLS in remote communities in the Top End, KWILS in Katherine, CAAFLU in Alice Springs.

4.1.2. Legal assistance may be granted where a protected person is unable to obtain assistance through other services. The general provisions of these guidelines, including priorities, means and merits tests, apply when making a decision whether or not to provide legal assistance in these matters.

4.2 Defendants

4.2.1. Legal assistance will not be granted for defendants in DVO proceedings (whether to consent, vary the order or defend the application) unless there are exceptional circumstances.

4.2.2. In determining whether there are exceptional circumstances the general priorities in Chapter 2 will be taken into account.

4.2.3. Legal aid will only be granted where the applicant meets the merit test in Chapter 1.

4.3. Personal Violence Restraining Orders

4.3.1. The same guidelines apply to applicants or defendants in PVROs as to defendants in DVOs.

Part 3 Commonwealth Civil Law

Note: The National Access to Justice Partnership Agreement (2025) provides for the Commonwealth Legal Aid Guidelines and Service Priorities for Commonwealth Civil Law matters. These priorities, in alphabetical order, are Civil Law matters that involve a grant of legal aid being provided for:

a. bankruptcy matters;

b. consumer law matters

c. employment matters;

d. extradition matters;

e. human rights and discrimination matters;

f. insurance law matters;

g. migration matters; and

h. social security law matters (including matters relating to military entitlements and military compensation claims).

Guideline 1 General

1.1 Consideration of resolution processes other than litigation

(1) In a Civil law matter under this Part 3, Legal Aid NT must consider making a Grant of Legal Assistance for an applicant for assistance to participate in dispute resolution services before it considers making a Grant of Legal Assistance to that applicant for Litigation Services at any stage in the proceedings.

(2) Legal Aid NT may make a Grant of Legal Assistance for an applicant for assistance to participate in dispute resolution services at any stage of a matter.

(3) Legal Aid NT may make a grant to investigate and report on the merits of a case.

1.2 Assistance for Civil Proceedings other than those dealt with in this Part 3

(1) Legal Aid NT may make a Grant of Legal Assistance for legal representation where the applicant for aid falls within one or more of the priority client groups listed below and/or is experiencing problems that are likely to have a significant adverse impact if not resolved. This includes where there are implications for a person's safety, health and wellbeing, access to government benefits and pensions, or homelessness.

(2) The priority client groups are:

a. children and young people (up to 24 years)
b. indigenous Australians:
c. older people (aged over 65);
d. people experiencing, or at risk of, family violence;
e. people experiencing, or at risk of, homelessness;
f. people in custody or prisoners
g. people residing in rural or remote areas;
h. people who are culturally or linguistically diverse;
i. people with a disability or mental illness;
j. people with low education levels; and
k. single parents.

1.3 Assistance for damages actions

Where a civil law action is likely to result in the applicant for assistance receiving an award of damages or property, Legal Aid NT will not ordinarily make a Grant of Legal Assistance if Legal Aid NT is satisfied from the material provided to it that:

(a) the action could reasonably be expected to be conducted under a conditional costs agreement or similar arrangement with a private legal practitioner, or

(b) the applicant for assistance can obtain appropriate legal assistance from another source.

Guideline 2. Extradition proceedings

2.1 Assistance for certain extradition proceedings

Legal Aid NT may make a Grant of Legal Assistance to an applicant for assistance in relation to the following types of proceedings under the *Extradition Act 1988:*

(a) extradition proceedings under section 19, and

(b) an appeal under section 21 in relation to a section 19 order.

Guideline 3. Human rights and discrimination cases

3.1 Assistance for certain matters if substantial benefit

Subject to guideline 1.2 in this Part 3, Legal Aid NT may make a Grant of Legal Assistance for an equal opportunity or discrimination case if there is a real prospect of substantial benefit being gained by the applicant for assistance.

Guideline 4 Migration cases

4.1. Assistance for migration matters

(1) Legal Aid NT may make a Grant of Legal Assistance for proceedings in the Federal Court, Federal Circuit Court or High Court dealing with a migration matter, including a Protection Visa matter, only if:

(a) there is a difference of judicial opinion that relates to a substantive issue in dispute that has not been settled by the Full Court of the Federal Court or the High Court, or

(b) the proceedings seek to challenge the lawfulness of detention, or

(c) there is an arguable error of law.

(2) In making a decision under (1)(c), Legal Aid NT will have regard to:

i. the importance of the case; and/or

ii. whether the case is a suitable vehicle for establishing new legal precedent.

Note Guideline 4.1(1)(b) does not include a challenge to a decision about a visa or a deportation order.

(3) Subject to available funding provided by the Commonwealth Government for these matters, Legal Aid NT may make a Grant of Legal Assistance for proceedings in the Administrative Appeals Tribunal and/or its successor body the Administrative Review Tribunal, for review of a negative decision in relation to a Protection Visa.

In all other cases, applicants should be referred to the Immigration Advice and Application Assistance Scheme (IAAAS) for possible assistance.

Note the means test will not be applied for Protection Visa matters under Guideline 4.1

Guideline 5. Social security law matters

5.1 Military entitlements and military compensation claims

(1) Legal Aid NT may make a Grant of Legal Assistance to an applicant for assistance who is a war veteran or a dependent of a war veteran in relation to:

(a) appeals from decisions of the Veterans Review Board about war caused disability pension entitlement or assessment claims under Part II of the *Veterans Entitlements Act 1986*, and

(b) appeals from decisions of the Veterans Review Board about claims under the *Military Rehabilitation and Compensation Act 2004* that relate to warlike or non-warlike service, in regard to:

(i) acceptance of liability (Chapter 2),

(ii) rehabilitation programs (Chapter 3, Part 2),

(iii) permanent impairment (Chapter 4, Part 2),

(iv) incapacity payments for former members (Chapter 4, Part 4),

(v) special rate disability pension (Chapter 4, Part 6), and/or

(vi) dependants benefits (Chapter 5).

(2) An application for a Grant of Legal Assistance under this guideline 5.1 is not subject to:

(a) the means test, or

(b) the applicant for assistance making any contribution to the cost of their legal assistance provided by Legal Aid NT in relation to the matter, other than to the extent of any costs recovered from the respondent in the matter.

5.2 Representation at Administrative Review Tribunal

Legal Aid NT may make a Grant of Legal Assistance to an applicant for assistance for representation at the Administrative Review Tribunal if:

(a) it is considered that the applicant may incriminate themselves, or

(b) the case is complicated, or

(c) requires significant medical evidence, or

(d) it would be unreasonable to expect the applicant for assistance to adequately represent himself or herself due to circumstances of vulnerability and/or disadvantage of a kind listed in the Commonwealth Legal Aid Service Priorities, Schedule A (A3), or

(e) Legal Aid NT determines that the appeal involves an important or complex question of law.

Guideline 6. Other Federal and High Court proceedings

6.1 Assistance for certain matters if substantial benefit

Subject to the other guidelines in this Part 3, Legal Aid NT may make a Grant of Legal Assistance for any of the following types of matters if there is a strong prospect of substantial benefit being gained by the applicant for assistance in relation to the matter:

(a) appeals from decisions of the Administrative Review Tribunal

(b) initiating proceedings in the Federal Court, the Federal Circuit Court or the High Court, and

(c) appeals in the Full Court of the Federal Court or the High Court.

Guideline 7. Appeals

7.1 Assistance for appeals

Subject to the other guidelines in this Part 3, Legal Aid NT may make a Grant of Legal Assistance for an appeal of a court decision in a civil law matter.

Note: For the civil law priorities in the Commonwealth Legal Aid Priorities, see Annexure A(A15) of the Agreement.

Guideline 8. Legal Financial Assistance provided by the Commonwealth Attorney-General - Administered by the Financial Assistance Section

This part was amended in 2014, though the scheme changed some time prior to that.

8.1. Legal financial assistance direct from Commonwealth Attorney General

Legal financial assistance is available direct from the department of the Commonwealth Attorney-General. These schemes, which have limited eligibility criteria, are administered by the Financial Assistance section.

The department administers the payment of costs certificates issued by federal courts.

The department provides legal financial assistance under the following schemes:

- Overseas child abduction scheme

- Disbursement support scheme
- Commonwealth public interest and test cases scheme
- Native title respondent funding scheme
- Serious overseas criminal matters scheme
- Special circumstances scheme
- Royal Commission into Institutional Responses to Child Sexual Abuse legal financial assistance schemes

The department also provides assistance under a number of other statutory schemes.

For full details of the schemes please contact the Financial Assistance section.

8.2. If legal aid is available from Legal Aid NT apply first to Legal Aid NT

In considering whether to make a grant of aid Legal Aid NT may take into account whether legal financial assistance is available from the Commonwealth Attorney General's Department.

Where the Legal Aid Review Committee refuses a grant of legal aid for a Commonwealth matter, the application for legal aid is to be referred by Legal Aid NT to the Legal Aid Branch for consideration.

8.3. Applications to the Financial Assistance section and criteria for determination of applications

The criteria for determining applications under these schemes varies considerably. For up to date information contact the Financial Assistance section on:

Within Australia: 02 6141 4770

Outside Australia: +61 2 6141 4770

Email: finass@ag.gov.au

For more information see the website on:

http://www.ag.gov.au/LegalSystem/Legalaidprograms/Commonwealthlegalfinancialassistance/Pages/default.aspx

8.4. Time limits

Applicants who have applied to Legal Aid NT should contact the Financial Assistance section as soon as possible because time limits may apply.

Chapter 8
Contingency Legal Aid Fund

Introduction

The Contingency Legal Aid Fund is available to provide financial assistance to eligible persons to enable them to bring or defend civil proceedings. It was set up with a seeding grant from the Law Society Public Purpose Trust and is administered by Legal Aid NT in accordance with Section 44 of the *Legal Aid Act*.

Pursuant to section 12(e) of the *Legal Aid Act* the following guidelines govern applications for the provision of legal assistance from the Contingency Legal Aid Fund (the "Fund").

Guideline 1. Financial Assistance

Financial assistance is available from the Fund to cover the reasonable cost of disbursements and out of pocket expenses that are necessarily incurred during the course of litigation including such items as stamp duty, service fees, expert witness reports, travelling expenses and expert witness Court attendance fees. The Fund does not pay Solicitor's professional fees and would not usually cover Counsel's fees or reimburse general office expenses such as photocopying, telephone charges or facsimile charge unless specific authorisation had previously been obtained.

Where financial assistance is granted to enable a person to bring or defend a civil proceeding a Loan Contract will be offered to the applicant. The Loan Contract will specify the terms and conditions of assistance, the type of expenses that will be covered as well as the maximum amount of the Fund's liability for those expenses.

Guideline 2. Applications for Assistance

(a) All applications shall be in the prescribed from and delivered to:

The Fund Manager Contingency Legal Aid Fund C/- Legal Aid NT 6th Floor 9-11 Cavenagh Street DARWIN NT 0800 Ph: (08) 89993000	Mailing address: Locked Bag 11 DARWIN NT 0801 Fax: (08) 89993005

(b) (i) All applications shall be accompanied by a letter from the applicant's solicitor, (which solicitor must be on the list of private legal practitioners maintained under Section 30 of the *Legal Aid Act*) detailing the merits and prospects of success of the proposed proceeding and the expected quantum.

(ii) The solicitor will also be required to provide an undertaking to accept instructions from an assisted person on the basis that the solicitor's professional fees and Counsel's fees not covered by the grant of assistance, are not sought or paid until the matter is concluded.

(iii) If it is proposed that Counsel will be briefed during the course of litigation then the solicitor should also indicate whether Counsel has been engaged generally in the matter and whether Counsel is prepared to await finalisation of the matter for payment of their fees.

(iv) The letter should also set out the nature and anticipated cost of the disbursements that are likely to be incurred during that stage of the proposed litigation.

(c) An administration fee of $200.00 (plus GST) shall be payable on the lodgment of the application. However, the Fund Manager has the discretion to waive all or part of the fee in circumstances where payment would involve undue hardship to the applicant.

(d) The CLAF Committee is a Legal Aid Committee established under Part III of the Legal Aid Act. The Fund Manager is the Director or their delegate and is the Chair of the CLAF Committee. The CLAF Committee may determine applications in the format agreed by the Committee, including by email, phone or meeting in person.

(e) All applicants shall disclose their full financial circumstances and if assistance is granted the applicant shall promptly disclose to the Fund Manager any significant variations in their financial circumstances. The applicant shall if required by the Fund Manager provide additional information or authorise any other person to disclose financial information.

Guideline 3. Means Test

Assistance will only be granted to an applicant who is unable to reasonably meet the expected cost of the disbursements that would be occasioned in the proposed or actual litigation from the income and assets available to the applicant.

The Fund Manager will determine whether the application meets the CLAF means test and may refuse the application if the means test is not met.

A decision in relation to whether the application meets the CLAF means test is reviewable under Part VI of the Legal Aid Act

The applicant may provide information with their application to support their claim that their circumstances meet the means test.

In determining whether the applicant is able to reasonably meet the expected cost of the disbursements:

i. The expected costs of disbursements will be taken into account and balanced against the applicants disclosed and predicted income, assets and living costs and expenses over the likely period of the litigation.

ii. It is not considered reasonable that the applicant should sell assets, such as a primary residence or motor vehicle necessary for use on a regular basis to meet the expected cost of the disbursement.

Guideline 4. Assessment of Applications

(a) Applications which have been determined by the Fund Manager to meet the means test will be assessed by a Legal Aid Committee established in accordance with Part III of the Legal Aid Act. The Committee shall consider each case in the light of the following assessment criteria which are listed in order of priority, commencing with the highest priority:

(i) To ensure the solvency of the Fund.

(ii) To give preference to cases with good prospects of success.

(iii) To give preference to those cases where the applicant has not previously been required to pay interim accounts for legal fees.

(iv) To support litigation of general importance.

(b) If it appears to the Fund Manager that the Applicant may be eligible for Legal Aid in accordance with Section 26 of the Legal Aid Act, the Committee may determine to reject or postpone consideration of the application until the applicant has lodged an application for legal aid.

(c) In the absence of exceptional circumstances any assistance will not be granted retrospectively.

(d) Any grant of assistance will extend from the date of receipt of the application to a set stage in the litigation process. At the conclusion of each of the stages of litigation the applicant may apply to the Committee through his/her solicitor, to extend the assistance to cover the next stage of the proceedings.

(e) The Committee shall not approve assistance for any litigation outside the Northern Territory unless the cause of action shall have arisen in the Northern Territory.

(f) The Fund Manager may require, as a condition of assistance, the applicant to contribute to the expected cost of the disbursements that will be incurred in the litigation having regard to the applicant's financial circumstances. Further the Committee may subsequently vary the terms of the contribution requirement on the grounds of the applicant's changed financial circumstances or a change in the merits or expected cost of the case.

(g) Any contribution fixed in accordance with these guidelines shall be paid at such time and in such manner, as the Committee shall direct.

(h) The Fund Manager may impose a condition of assistance that the applicant provides an equitable charge for the benefit of Legal Aid NT, as administrator of the Contingency Legal Aid Fund, over any land in which that person has an interest.

(i) If the application is rejected then the applicant has the right of requesting a reconsideration or review in accordance with Part VI of the Legal Aid Act.

(j) An application for reconsideration or review must be in writing and made within 3 months of the date the applicant has received or can reasonably be expected to have received the earlier decision refusing financial assistance.

Guideline 5. Variation of Assistance

A committee, whether in fact it was the Committee that determined the application, may at any time after the approval of the application for assistance vary, suspend, cancel or terminate such assistance on any of the following grounds:

(a) The information provided by the applicant or their solicitor to the Committee was materially inaccurate.

(b) The applicant's case appears to lack merit.

(c) The ultimate return to the Fund is likely to be significantly less than the earlier anticipated return.

(d) The applicant has unreasonably refused to follow advice from their solicitor.

(e) Failure by the applicant or their solicitor to report adequately to the Fund Manager.

(f) Failure by the applicant or their solicitor to comply with any rules or any requests or direction of the Fund Manager.

(g) Any other good cause.

If the committee terminates the grant of assistance, then all monies paid by the Fund on behalf of the applicant prior to termination shall be immediately recoverable by Legal Aid NT on behalf of the Fund.

On termination the matter will be deemed to be concluded, and the applicant's solicitor will be entitled to render an account to the client for professional services up to that time.

If the application is varied, suspended, cancelled or terminated then the applicant has the right to request a reconsideration or review in accordance with Part VI of the Legal Aid Act.

Guideline 6. Reporting

The Fund Manager may require a report from the assisted person or their solicitor (including an opinion from Counsel) at any time regarding any matter connected with the assisted litigation or the financial circumstances of the applicant. Such report should be provided to the Fund Manager upon request within a reasonable time.

The applicant's solicitor shall immediately inform the Fund Manager upon becoming aware of any changes in the applicant's financial situation or of any other matters which may tend to result in the Committee varying the terms and conditions of assistance.

Guideline 7. Contingency Fee

(a) In determining to grant assistance to an applicant the Committee will specify a fee that the applicant will be required to pay to the Fund (over and above the reimbursement of monies actually expended by the Fund) upon successful completion of the applicant's litigation. This is referred to as the "contingency fee".

(b) The contingency fee shall be a pre-determined percentage of the monies actually advanced by the Fund during the course of litigation.

(c) The contingency fee together with the entitlement of the Fund to recover all monies expended during the course of litigation shall be a first charge, enforceable by Legal Aid NT, on any amount or value of property recovered by the assisted person as a result of the assisted litigation and these sums shall be paid to the Fund as soon as practicable.

(d) Where the assisted person derives no benefit from the proceedings then the contingency fee will not be payable. However, the assisted person will be liable to repay to the Fund all monies advanced on their behalf and the assisted person will also be liable to pay their solicitor's and Counsel's fees.

Guideline 8. Payments from the Fund

(a) The Fund shall reimburse the applicant's solicitor for approved disbursements as they arise. It is envisaged that solicitors would pay the expense at first instance and then submit an invoice to the fund for reimbursement. However where significant items of expenditure are involved the Fund Manager can authorise pre-payment.

(b) Upon completion of the proceedings the applicant's solicitor and Counsel will be entitled to render a charge to their client for their full professional fees in accordance with the applicable costs scale or pre-existing fee agreement.

(c) A legal practitioner shall not render any charge to an assisted person for professional fees except in accordance with these guidelines and the Fund has no liability to meet the practitioner's professional fees or Counsel's fees unless these have been specifically approved.

Guideline 9. Termination of Assistance

An applicant may terminate the assistance at any time by notifying the Committee in writing. However, the contingency fee and all monies paid from the Fund on behalf of the assisted person shall continue to be recoverable pursuant to these guidelines and the Legal Aid NT may in its discretion recover all or part of the amount payable to the Fund.

Guideline 10. Transfer of Assistance

An applicant may with the permission of the Fund Manager transfer the grant of assistance from one solicitor to another.

Guideline 11. Litigation Support Loan Contract

Before any financial assistance is provided to a person in accordance with this section, the applicant(s) must first have executed a Litigation Support Loan Contract.

Chapter 9
Conditions of Referral to Private Legal Practitioners

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 Legal Aid NT pursuant to sub-section 30(1).

The arrangements entered into between Legal Aid NT 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 Legal Aid NT the practitioner will undertake the work in accordance with the terms and conditions of the grant to the best of their ability and at the highest professional standards and upon completion Legal Aid NT will pay the amount approved.

2. Acceptance of Referrals

2.1. Should a practitioner not be prepared to accept any assignment they must notify their refusal in writing within 14 days of the notification of grant of assistance. If a practitioner does not so notify their refusal to accept the assignment they are 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.

2.2 Legal Aid NT 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.

2.3 Legal Aid NT reserves the right to fix individual terms and conditions where such are appropriate to any individual matter assigned.

2.4 It is expected that when assistance is granted an applicant will accept the advice of the solicitor or counsel to whom they are assigned. Practitioners are required to report any significant failure to accept such advice where in their legal judgment the client's interest or the conduct of the case is thereby prejudiced.

2.5 Practitioners are required to advise the client to advise Legal Aid NT 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.

2.6 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 Legal Aid NT.

(b) It shall be the duty of counsel in a legally assisted matter to ascertain the terms and conditions approved by Legal Aid NT.

2.7 Where a private legal practitioner performs or has performed legal services on behalf of a legally assisted person they 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 they are entitled under the Act.

2.8 These terms and conditions shall apply to all partners of the firm (if any) of which the practitioner on the list is a member.

3. Reporting Obligations and Submitting a Claim to Legal Aid NT

3.1 Pursuant to section 30 of the *Legal Aid Act (NT)* the Director may in such classes of cases as Legal Aid NT 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.

3.2 Practitioners are required to advise Legal Aid NT 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 Legal Aid NT's declining to accept liability for such increase in costs.

3.3 All invoices submitted to Legal Aid NT must be accompanied by a brief progress report on the matter.

3.4 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 Legal Aid NT to determine whether the fee sought

by the practitioner is properly payable, will be accepted by Legal Aid NT 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.

3.5 If so required by Legal Aid NT a practitioner shall produce to Legal Aid NT the file or files relating to the matter in respect of which assistance was granted.

3.6 In the event that Legal Aid NT considers that the practitioner requires further training in a particular area of the law, Legal Aid NT will not approve any future grant of aid to that practitioner until they have undertaken such training to the satisfaction of Legal Aid NT.

3.7 In connection with any application for assistance, assigned matter or account a practitioner shall provide all information and give such assistance as Legal Aid NT may require from time to time.

3.8 No private legal practitioner shall make a claim for any disbursement or fee for the payment of which they could have obtained an exemption by virtue of the fact that the client was legally aided.

4. Limits on Liability of Legal Aid NT

4.1 Legal Aid NT 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 Legal Aid NT;

(b) interviews, letters and communications with the client and/or Legal Aid NT 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 their discretion determine that the applicant or Legal Aid NT 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.

4.2 (a) No counsel may be briefed in any matter without the approval of Legal Aid NT in writing.

(b) If such approval is given counsel shall not be briefed except upon the terms notified to the solicitor by Legal Aid NT.

(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 their fee.

4.3 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 Legal Aid NT will offer to a private practitioner lump sum fees fixed by Legal Aid NT 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, Legal Aid NT will normally pay 80% of the fees ordinarily payable in respect of similar services provided to a person who is not an assisted person.

5. Contributions and Costs

5.1 Except upon the bases set out in Chapter 3, Part 8 Legal Aid NT will not accept responsibility for the payment of costs awarded against the applicant.

5.2 (a) Attention is drawn to section 29 of the *Legal Aid Act 1990*, pursuant to which Legal Aid NT may grant legal assistance subject to a condition that the applicant pays to Legal Aid NT either:

(i) the full amount or a contribution towards the costs of Legal Aid NT providing assistance; or

(ii) a payment to Legal Aid NT 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 Legal Aid NT 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 Legal Aid NT, 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 Legal Aid NT 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) Legal Aid NT may by notice in writing direct a legally assisted person or a private legal practitioner acting for such person to pay to Legal Aid NT the whole or such part as is determined by Legal Aid NT 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.

5.3 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 Legal Aid NT; or to pay any out-of-pocket expenses incurred by Legal Aid NT.

5.4 No agreement shall be entered into with any party which would limit an applicant's right to recover costs without the consent of Legal Aid NT first having been obtained.

6. Limitations on Grants

6.1 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 Legal Aid NT must first be obtained in writing.

6.2 Legal Aid NT will not generally approve invoices for work performed by practitioners where prior approval has not been obtained from Legal Aid NT. Practitioners should therefore monitor the amount of commitment available on a file and ensure appropriate approvals are sought before work is performed.

6.3 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 Legal Aid NT and by notice in writing.

Chapter 10
Scale of Costs

Part 1 General Notes

1. Fees Recoverable

Section 31 of the *Legal Aid Act 1991(NT)* prohibits a private practitioner from accepting any payment from a legally aided person or from any person on their behalf in relation to a legally aided matter other than those payments which may be authorised by Legal Aid NT.

2. Examination of Solicitor's Files

Legal Aid NT reserves the right to call for a solicitor's file on legally aided matters in relation to any account rendered for payment.

3. Deferred Payment

Legal Aid NT may defer payment of fees payable by it to a solicitor in connection with legally assisted proceedings until Legal Aid NT is satisfied the practitioner has taken reasonable steps to recover party/party costs to which the assisted person is entitled.

4. Protection of Costs

Legal Aid NT requires a solicitor to retain control of any money that comes into the solicitor's control or possession, until Legal Aid NT has assessed the assisted person's final contribution. See General Conditions of Referral to Private Legal Practitioners contained in the Guidelines.

5. Transfer of Solicitors

Where Legal Aid NT consents to a transfer of solicitors the legally aided person may be required to pay an additional contribution to cover all costs associated with that transfer. The consent of Legal Aid NT should be obtained prior to the transfer.

6. Reporting to Legal Aid NT

No fee is payable for communications and correspondence with Legal Aid NT in respect of the administration of the grant of aid. This includes the initial application for legal aid and the letter of merit that should accompany it, any reports as to the progress of the matter, perusal of any letters from Legal Aid NT, preparation of any accounts and any telephone or facsimile communications.

7. Preparation of Accounts

Legal Aid NT does not pay for the preparation of solicitor's account. To enable Legal Aid NT to assess and pay accounts promptly, the accounts must be itemised, i.e. noted in chronological order and containing a description of the work performed together with the amount of time taken to perform the work.

8. Travelling Time

Unless there are exceptional circumstances Legal Aid NT will not pay a practitioner's travelling time to Court.

9. Waiting Time

Unless there are exceptional circumstances Legal Aid NT will not pay for waiting time at Court.

10. Briefing Counsel

Counsel should not be briefed in any jurisdiction without prior authorisation from Legal Aid NT. All Briefs to Counsel should be marked as a legally aided matter and disclose the fee.

If the fees for Counsel are not set out in the letter of referral, Counsel should not be briefed without first negotiating a fee with Legal Aid NT.

11. Matters in Which Counsel may not be Briefed

Criminal matters in the Local Court unless, in the opinion of Legal Aid NT, the proceedings are extraordinarily complex and involve a serious charge.

Civil matters in the Local Court including Crimes Victims Assistance applications unless in the opinion of Legal Aid NT the proceedings are of sufficient complexity and involve quantum or an issue of such substance that Counsel should be briefed.

Generally in all jurisdictions in mentions and like appearances unless the briefing of Counsel would procure a saving of costs or prior approval has been obtained from Legal Aid NT

Part 2 Disbursements

1. Generally

Prior approval is necessary for expenditure of all disbursements.

2. Photocopying and Facsimile Messages

Where prior approval is granted photocopying, printing and facsimiles will be paid at 12¢ per page.

3. Office Sundries

Standard postage, petties, local telephone calls and file administration fees are considered normal office overheads and are not payable. Reasonable STD telephone charges will be paid.

4. Witness Expenses

If remunerated in their occupation by wages, salary or fees the amount lost by the witness in attending Court is not to exceed $150.00 without prior approval of Legal Aid NT.

5. Travel and Accommodation Expenses

In the absence of specific arrangements economy airfares will be made available for all approved travel. Legal Aid NT will meet reasonable, standard accommodation expenses.

Flights and accommodation will be booked and paid for by Legal Aid NT unless otherwise agreed.

Travel expenses incurred, as a result of road or bus travel will be met on an individual basis as agreed.

Legal Aid NT will not pay for luxury accommodation or ancillary expenses, eg. phone calls, bar tab, mini-bar, dry-cleaning etc.

6. Agents Fees

These charges are subject to the same terms and conditions of the grant of aid imposed on the principal solicitor and should be in accordance with Legal Aid NT's Guidelines for payment. When engaging agents the principal solicitor should provide the agents with a copy of the appropriate scale.

The agent's account should be forwarded for payment to Legal Aid NT before or with the principal solicitor's final account. Where the agents account is received after the principal solicitor's final account, Legal Aid NT reserves the right to refuse payment and to direct such payment to the principal solicitor.

7. Experts Reports

The cost of expert reports, e.g. doctors, engineers, property valuations, etc. are subject to the prior authorisation of Legal Aid NT.

Part 3 Scales of Payment to Solicitors

1. Criminal Law Matters

1.1 Local Court

Matters to be dealt with summarily

Initial Grant on primary court file Includes all work to dispose of the matter by way of plea of guilty or to undertake initial preparation for a contested hearing. If the matter resolves as a plea, the grant includes reporting back to NTLAC with sentence.	$1625 (in custody); $1500 (not in custody)
Initial Grant for each additional court file Includes all work to dispose of the matter by way of plea of guilty or to undertake initial preparation for a contested hearing. If the matter resolves as a plea, the grant includes reporting back to NTLAC with sentence.	$750 (in custody); $625 (not in custody)
Contested Summary Hearing Grant Requires merit assessment. Includes balance of preparation for hearing; representing the client at hearing and if convicted, in relation to the sentence.	$750 per day of hearing
Subsequent Plea Hearing Grant Report required providing reasons why plea was not finalised on previous appearance.	$250 per additional appearance after plea entered/ conviction made

Strictly indictable matters

Initial Grant per court file Includes reviewing brief, conferring with client, all negotiations with DPP, all court appearances* to commit the matter to the Supreme Court by way of hand up brief or to commence preparing matter for oral committal. If the matter is resolved to be dealt with summarily, includes plea in the Local Court or commence preparation for summary hearing.	$1875 (in custody); $1750 (not in custody)
Additional PEM grant *Available if more than 5 PEMs attended. Provide report, including dates of previous attendances, with reason for further PEM.	$125 per appearance
Oral Committal grant This grant is for the practitioner with carriage of the matter. Includes appearing as counsel or instructing counsel (if instructor approved).	$750 per day of hearing
Oral Committal counsel **(where counsel and instructor approved)** Includes preparing and appearing at the committal.	$1650/$2200 per day of hearing (Counsel rate/Senior Counsel rate)
Additional Oral Committal Preparation for Extraordinary Cases (e.g. voluminous material; complex legal issues; seriousness of charges; client requires interpreter)	by negotiation

Local Court bail application	
Straight forward/consent	$375
Complex	$625

1.2 Supreme Court

Supreme Court Bail Application:

Straight forward:	$550.00
Complex:	$1100.00

Grant includes preparation, preparation of documents advising client, liaising with prosecutions and court appearances.

Supreme Court Plea: $1320.00

Grant includes taking instructions, all preparation, negotiations with DPP, all court appearances including receiving sentence and reporting back to Legal Aid.

Supreme Court Trial and CCA:

Solicitor/Junior Counsel	$1320.00- 1650.00/day
QC /SC	$2200.00/day

Grant of aid is provided at a daily rate and will include a grant of aid for preparation at the same daily rate.

Barr Letter: $412.00

Grant includes collating brief, providing a preliminary view of prospects of success and sending a BARR letter to DPP and the Court.

Local Court Appeal:

Investigation and advising Legal Aid NT on merit:

Sentence:	$440.00
Conviction:	$880.00
Both:	$1320.00
Extensions:	**$**165.00 per hour or full day whichever is less.

2. Family Law Matters

2.1 For Parties (non-ICL)

Stage 1 – Early Intervention Stage: Lawyer-Assisted Family Dispute Resolution/ Negotiation in Compliance with Pre-action Procedural Requirements

1A Family Law Conference ("FLC") with NT Legal Aid FDR Service

a. Taking instructions, providing advice and preparing for participation in FLC ($330/2 hours)
b. Representing Legally Assisted Person at a Property Preparatory Conference for Property Disputes only ($330/2 Hours)
c. Representing Legally Assisted Person at FLC ($660/4 hours)
d. Preparing and filing consent orders ($165/1 hour)

1B Pre-Action Procedure Compliance

a. If a FLC has not been conducted and no FLC preparation grant expended:
    i. 4 hours/ $660 (parenting)
    ii. 6 hours/$990 (property) or
    iii. 8 hours/$1320 (both parenting and property);
b. if a FLC has been conducted or FLC preparation grant expended:
    i. 2 hours/$330 (parenting)
    ii. 3 hours/$495 or (property) or
    iii. 6 hours/$990 (both parenting and property)

Stage 2 – Initiating Litigation

2A. Recovery/information or location order - $1320 (8 hours).

a. Take instructions, prepare and appear at first court event
b. Subsequent appearance on recovery (3 hours or $495)
c. Preparation for second subsequent appearance on recovery in exceptional circumstances (2 hours or $330)
d. Second subsequent appearance on recovery in exceptional circumstances (3 hours or $495)

2B. Initiating/responding to application for interim and final parenting or property orders - 14 hours or $2310

a. Taking instructions and communicating with client

b. Drafting and filing court documents
c. Service
d. Obtaining short service where required
e. Negotiating with other parties
f. Appear at the first procedural hearing
g. Filing consent orders if appropriate

2C. Initiating/responding to application for property or parenting orders (in addition to 2B grant where both parenting and property in dispute) - 6 hours or $990

2D. Interim contested hearing (preparation 6 hours or $990; appearance 5 hours or $825)

a. Subpoena relevant documents and review
b. Taking instructions and communicating with client
c. Drafting and filing court documents
d. Reviewing materials including child impact report/family report
e. Appear at the interim hearing

2E. Subsequent appearance fee on interim contested hearing – 3 hours or $495

2F. Procedural hearing - mention, directions hearing or callover – 2 hours or $330

2G. Attend court to inspect subpoenaed documents/s69ZW materials – 3 hours or $495

2H. Prepare client for and review Family Report/Child Impact Report and advise client – 3 hours or $495

2I. Court-Based Family Dispute Resolution (FDR) Conference

a. Preparation including compiling a confidential case outline and minute of orders, and attendance at Part 1 of the FDR conference ($495/3 hours)
b. Attendance at Part 2 of the FDR conference ($1320/8 hours for full day, if half day $660/4 hours)
c. Preparing and filing consent orders ($165/1 hour)

2J. Late Stage FLC with NT Legal Aid FDR Service

a. Taking instructions, providing advice and preparing for participation in FLC ($330/2 hours)
b. Representing Legally Assisted Person at FLC ($660/4 hours)
c. Preparing and filing consent orders ($165/1 hour)

2K. Application for Contravention, Enforcement or Contempt Proceedings – 12 hours or $1980

a. Taking instructions for initiating court proceedings and for affidavits
b. Communications
c. Preparation of court documents

d. Service including obtaining short service
e. All preparation and court appearances up to final hearing or making of consent orders.

2L. Compliance and Readiness Hearing/Trial Management Hearing – 6 hours/$990

Stage 3 – Preparation for trial

3A. Preparation for trial listed for less than 3 days – 12 hours ($1980)*

a. Drafting and filing documents
b. Negotiating with other parties
c. Attendance at 3 procedural/directions hearing including compliance and readiness hearing
d. Preparation of evidence analysis and case strategy

3B. Additional preparation for 3 or 4 day trial – 6 hours ($990)

3C. Additional preparation for 5 or 6 day trial – 9 hours ($1485)

3D. Preparation for counsel – 8 hours or $1650*

3E. Additional preparation for counsel for 3 or 4 day trial – 3 hours or $618

3F. Additional preparation for counsel for 5 or 6 day trial – 6 hours or $1236

Stage 4 - Trial

4A. Instructing solicitor appearance at trial – 8 hours or $1320 per day

4B. Counsel or solicitor advocate appearance at trial – 8 hours or $1650 per day

Stage 5 - Appeal

4A. Appeal to single Judge – 10 hours/$2060 preparation plus daily appearance fee 8 hours/ $1650

4B. Appeal to Full Court – 8 hours/$1650 preparation plus daily appearance fee 8 hours/ $1650

STANDARD FEES ARE CALCULATED AT RATE OF $165 PER HOUR (EX GST)

COUNSEL FEES ARE CALCULATED AT A RATE OF $206 PER HOUR (EX GST) – only approved for contested interim hearings, trial or appeal stage and will depend upon the complexity of the matter.

2.2 For Independent Children's Lawyer

Stage 2 – Litigation

No.	Service	Hours	Fee
1	Preparation and appearance at first procedural hearing	14	$2310
2	If more than 2 other parties or interpreter required	3	$495
3	If more than one conference with child required or separate conference required for additional child, or for conference to explain final orders	2	$330
4	Interim defended hearing - Preparation	8	$1320
5	Interim defended hearing – Appearance at rate of $165 for actual time spent, up to 5 hours	5	$825
6	Counsel Interim Defended Hearing	8	$1648
7	Court-Based Family Dispute Resolution Conference Preparation Attendance at Part 2 Drafting and filing consent orders	 3 8/4 1	 $495 $1320/$660 $165
8	Family Law Conference with LANT FDR Service Preparation Attendance at Part 2 Drafting and filing consent orders	 2 4 1	 $330 $660 $165
9	Appointment of Single Expert	4	$660
10	All work post interim substantive orders up to trial (*includes all procedural appearances, reviewing reports, issuing subpoenas and information sharing requests, inspection and collation of documents, all negotiations with parties, attendance by the ICL at a compliance and readiness hearing and finalising matter by consent.*	26	$4290

Stage 3 – Preparation for Trial

	Service	Hours	Fee
11	ICL Preparation for trial listed for less than 3 days	12	$1980
12	ICL Preparation for trial listed for 3 or 4 days	18	$2970
13	ICL Preparation for trial listed for 5 or 6 days	21	$3465
14	Preparation for counsel for trial listed for less than 3 days	8	$1650
15	Additional preparation for counsel for 3 or 4 day trial	3	$618
16	Additional preparation for counsel for 5 or 6 day trial	6	$1236

Stage 4 - Trial

	Service	Hours	Fee
17	Negotiating settlement of a matter prior to final hearing	6	$990
18	ICL attend trial – per day	8	$1320
19	Counsel or ICL appearing as advocate without counsel	8	$1650

Stage 5 - Appeal

	Service	Hours	Fee
20	Appeal to single Judge – preparation	10	$2060
21	Appeal to Full Court - preparation	8	$1650
22	Appeal daily appearance fee	8	$1650

Stage 6 – Post Final Orders

	Service	Hours	Fee
23	Represent child(ren) for 6 months as per final orders	3	$495

3. Civil Law Matters

3.1 High Court and Federal Court

As negotiated with Legal Aid NT.

3.2 Supreme Court/Motor Accidents Compensation Tribunal

As negotiated with Legal Aid NT

3.3 Local Court

As negotiated with Legal Aid NT

3.4 Work Health Court

As negotiated with Legal Aid NT

3.5 Administrative Appeals Tribunal

As negotiated with Legal Aid NT

3.6 Veterans Matters

Legal Aid NT pays $149.00 per hour.

3.7 Domestic violence and personal violence restraining orders

Legal Aid NT pays $149.00 per hour.

3.8 Care and protection

Legal Aid NT pays $149.00 per hour.