

Chapter 3

How to Apply for Legal Assistance

Part 1

Application Forms

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

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

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

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

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

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

- (a) if the applicant and any financially associated person are employed, a copy of a recent pay slip(s), or a letter from the employer(s) or other proof of current weekly income;
- (b) if either is self employed, a copy of the most recent taxation return;
- (c) if either is in receipt of a pension or benefit, a photocopy of both sides of the Statement of Benefit form from Centrelink;
- (d) if either have bank accounts or investments exceeding in total \$500, a statement showing transactions in the account(s) over the past 3 months or where appropriate production of a passbook.

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.

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

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

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

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

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

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

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

Part 4 Reconsideration and Review of Decisions

A person who is dissatisfied with a decision on an application for legal assistance or the provision of assistance may ask that the decision be reconsidered. Reconsiderations will generally be assessed by a Commission officer who was not the original decision maker. The Commission may seek opinions from independent private practitioners to assist in reconsiderations.

If a person is still dissatisfied after the reconsideration they may apply to the Commission in writing for a review by a Review Committee and the Commission must comply with the request. Review Committees are composed of one Commission officer and 2 private practitioners.

A person who wishes to apply for a reconsideration or review must do so within 3 months of receiving notice of the relevant decision.

Requests for reconsideration or review should be made in writing and addressed to the Director.

The decision of a Review Committee is final and conclusive.

Part 5 Retrospective Applications & Extensions

The Commission will not generally approve invoices for work performed by practitioners where prior approval has not been obtained from the Commission.

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

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

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

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

The lodging of applications for legal assistance for criminal trials less than 14 days before the trials are due to commence creates administrative difficulties for the Commission and the courts and may disadvantage applicants. While late lodging of applications may be unavoidable in some circumstances, in the majority of cases instructions to act will be received by the practitioner some time before the trial. 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 is due to commence.

The Commission has decided that the provision, without reasonable cause, of an application for legal assistance within 14 days of the date fixed for the trial constitutes grounds for the Commission to remove the practitioner from the panel maintained pursuant to Section 30 of the Legal Aid Act (NT).

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

1. Where a client unreasonably refuses to accept the advice of the allocated practitioner;
2. Where a client is abusive to Commission staff or the allocated practitioner;
3. Where a client is no longer eligible for a grant of legal assistance;
4. Where a client or practitioner fails to comply with these guidelines. (If aid is terminated due to a practitioner's failure to comply with the guidelines a further grant will be considered for the client.)

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

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

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