

**AGREEMENT**

**between**

**COMMONWEALTH OF AUSTRALIA**

**and**

**NEW SOUTH WALES**

**in relation to**

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**PROVISION OF LEGAL ASSISTANCE**

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THIS AGREEMENT is made on the 14th day of August  
2000

BETWEEN

COMMONWEALTH OF AUSTRALIA ("the Commonwealth")

AND

NEW SOUTH WALES ("the State")

### BACKGROUND AND OBJECTIVES

- A The Commonwealth and the State recognise that legal assistance is an important element in the administration of justice, providing a key mechanism for persons in need of legal help to obtain that help.
- B The State has enacted the *Legal Aid Commission Act 1979* (the Act) to establish the Legal Aid Commission of New South Wales ("the Commission") to give effect to the laws and policies of the State in the administration of legal aid.
- C The Commonwealth and the State recognise that this Agreement shall be binding on the Commission pursuant to the Act as amended from time to time.
- D The Commonwealth proposes to enter into an agreement with the State for the purchase, through the Commission, of legal assistance for matters arising under Commonwealth law, as set out in Schedule 1 of this Agreement, being matters of priority to the Commonwealth as set out at Schedule 2.
- E The State is prepared to agree to the Commission purchasing legal services and providing legal assistance to persons in need in accordance with the Commonwealth's priorities set out in Schedule 2.
- F As purchasers and/or providers of legal assistance the Commonwealth and the Commission will seek further improvements in services and accountability through:
- effective and efficient management structures and reporting mechanisms;
  - effective and efficient service delivery, including early intervention and preventative strategies such as primary dispute resolution where appropriate; and
  - optimising the availability of access to the legal assistance system through equitable distribution of resources across the States and Territories.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

1.1 In this Agreement, and its Schedules unless otherwise provided:

**“assignment”** means: the function of processing applications for legal assistance by the Commission and, where an approval is granted, all the administrative and policy functions associated with the management of those grants.

**“Commonwealth Minister”** means:

- (a) the Attorney-General of the Commonwealth;
- (b) any other Minister who, for the time being, has responsibility on behalf of the Commonwealth for administering the matters to which this Agreement relates; or
- (c) any Minister who is acting for and on behalf of either of the Ministers referred to in (a) and (b);

**“expensive criminal law case”** is a case, the financial impact of which is likely to significantly affect the ability of the Commission to deliver outputs as set out in Schedule 1 and for which an application may be made under Criminal Law Guideline 8 of Schedule 3;

**“grants of legal assistance”** means any legal services, howsoever described, provided in accordance with a decision or determination under Part 3 of the *Legal Aid Commission Act 1979 (NSW)* (“the Act”) as amended from time to time;

**“legal assistance”** means legal advice, legal aid or both (as defined in the Act) and includes grants of legal assistance, legal advice, the provision of minor assistance, duty lawyer services, community legal education, primary dispute resolution and any other service that is directed towards the resolution of a legal matter which the Commission may provide pursuant to the Act;

**“Managing Director”** has the same meaning as in the Act.

**“outputs”** means legal assistance services and assignments;

**“primary dispute resolution”** means any non-adversarial dispute resolution mechanism involving the intervention of a neutral third party, and taking place with or without the consent of the parties to the dispute, by which a dispute between the parties may be resolved. It includes processes such as counselling, mediation, arbitration, conferencing, or other means of conciliation or reconciliation.

**“Secretary”** means:

- (a) the Secretary of the Attorney-General's Department; or

(b) if a Minister other than the Attorney-General has for the time being responsibility for the administration of the matters to which this Agreement relates, the Secretary of the Department administered by that Minister; and

(c) in either case includes a person who is for the time being occupying or performing the duties of the office of Secretary;

**“State Minister”** means:

(a) the Attorney-General of the State;

(b) any other Minister who, for the time being, has responsibility on behalf of the Commonwealth for administering the matters to which this Agreement relates; or

(c) any Minister who is acting for and on behalf of either of the Ministers referred to in (a) and (b);

**“strategic services”** means the services associated with managing and giving effect to this Agreement. These services represent all aspects properly giving rise to Commonwealth costs which cannot be attributed to a particular service output category in Schedule 1.

**“war veterans’ matters”** means grants of legal assistance to war veterans or their dependents in connection with reviews of decisions of the Veterans Review Board in respect of war-caused disability pension entitlement or assessment claims under Part II of the *Veterans’ Entitlement Act 1986*; and

**“year”** and **“financial year”** means a period of twelve months ending on 30 June.

## 1.2 In this Agreement

(a) a reference to a clause is a reference to a clause of this Agreement, and a reference to a subclause is a reference to the relevant subclause of the clause in which the reference appears;

(b) a reference in a Schedule to a paragraph is a reference to a paragraph of that Schedule and a reference to a subparagraph is a reference to the relevant subparagraph of the paragraph in which the reference appears;

(c) each of the Schedules referred to is a Schedule to this Agreement and each is an integral part of this Agreement. Where the Agreement provides for variation of the Schedule a reference to a Schedule includes the Schedule as varied;

(d) words importing a gender include every other gender;

(e) words in the singular number include the plural and vice versa; and

(f) a reference to any legislation includes that legislation as amended from time to time and any statutory modification or re-enactment of that legislation.

## 2. TERM OF OPERATION AND RENEWAL

2.1 This Agreement will operate from 1 July 2000 and will be for a period of 4 years.

2.2 From the date of commencement of the State's amendments to the Act to enable the Commonwealth to enter into direct agreement with the Commission for the purchase of legal assistance for matters arising under Commonwealth law, subject to the terms of such amendments, a new Agreement, containing comparable provisions to those in this Agreement, is to be promptly concluded between the Commonwealth and the Commission to replace this Agreement for the balance of the term under this Agreement. The new Agreement is to commence on the first day of the next calendar month following the conclusion of the new Agreement.

2.3 During the operation of this Agreement and any replacement Agreement concluded under clause 2.2 the relevant parties will work towards finalising a replacement Agreement to operate from the end of the term of this Agreement. If a replacement Agreement has not been finalised before 30 June 2004, this Agreement, or the replacement purchaser/provider Agreement, will continue to operate, unless either party gives notice to terminate in accordance with subclause 7.6.

2.4 In the event that the State proposes legislation which has the effect of making redundant or making a fundamental change to the operation of the Agreement for delivery of legal assistance in the State, the State will inform the Commonwealth of the proposed legislation before its introduction and give the Commonwealth sufficient opportunity to make representations on the proposed legislation.

## 3. PURCHASE OF OUTPUTS

3.1 Subject to the provision of this Clause:

(a) The Commonwealth will pay an annual fee in accordance with Schedule 1 to the Commission for performing the strategic services functions necessary to provide legal assistance services; and

(b) The Commonwealth will purchase from the Commission on an annual basis the targeted number of outputs at the prices specified in Schedule 1. Provision for annual review of the targeted number of outputs and prices is contained in subclause 5.5.

3.2 The parties acknowledge that any agreement about the expenditure of public moneys is subject to the appropriation of those moneys for the purpose by the Commonwealth Parliament.

3.3 On 29 March 2000, Australian Taxation Office Ruling GSTR 2000/4 Goods and Services Tax : Appropriations was issued. On the basis of that Ruling, the Commonwealth understands that the GST will not have any implications for any payments made under this Agreement.

- 3.4 The Commission will provide legal assistance services at the agreed levels and prices set out in Schedule 1. Such services shall be limited to:
- (a) grants of legal assistance in matters arising under Commonwealth law, or laws for which the Commonwealth accepts special responsibility and which are in either case matters of priority to the Commonwealth; and
  - (b) other legal assistance, as provided for and in accordance with the service purchasing arrangements described in Schedule 1.
- 3.5 Matters of priority to the Commonwealth are described in Schedule 2 and Commonwealth Guidelines are set out in Schedule 3. Any grant of legal assistance is to be provided by the Commission in accordance with those priorities and guidelines.
- 3.6 Both Schedules 2 and 3 are subject to change at the Commonwealth's initiative, in line with changes in community needs and Commonwealth policies, but no such changes shall be made without consultation with the State and the Commission.
- 3.7 After the consultation referred to in sub-clause 3.6, any changes will be made by formal notification in writing to the State and the Commission. When notifying changes to the Commission, the Commonwealth will ensure that proper regard is had to matters already in progress under former Commonwealth priorities and guidelines, and the need for the Commission to make any consequential administrative changes, including to the level of outputs and prices under Schedule 1. Changes to the Commonwealth priorities or Guidelines will not take effect until three months after written notice is given, or such shorter time as may be agreed between the Commonwealth, the State and the Commission.

#### 4. SERVICES AND SERVICE PROVIDERS

- 4.1 The services to be provided by the Commission in the expenditure of Commonwealth funds are:
- (a) grants of legal assistance, both in-house and referred, in accordance with the Commonwealth priorities described in Schedule 2; and
  - (b) other legal assistance services, including primary dispute resolution, as provided for and in accordance with the purchasing arrangements described in Schedule 1.
- 4.2 The services provided by service providers are subject to the following:
- (a) the Commonwealth requires its matters to be undertaken in the most efficient and cost effective manner having regard to the types of services persons receiving legal assistance would be likely to obtain if they were funding the matter themselves; and
  - (b) the need for service delivery practices to be effective and efficient.

In this subclause, "service providers" includes private legal practitioners, the Commission, mediators, counsellors, welfare officers, conference

facilitators and other persons or organisations who provide services pursuant to this Agreement.

## 5. MANAGEMENT AND ACCOUNTABILITY OF COMMONWEALTH FUNDS

- 5.1 The Commission will manage and account for the allocation of Commonwealth funds to ensure and demonstrate that:
- (a) the priorities described in Schedule 2 are met; and
  - (b) services are provided in an equitable manner; and
  - (c) resources are used in the most efficient and cost effective manner; and
  - (d) the Commonwealth Guidelines in Schedule 3, as amended from time to time, are observed.
- 5.2 The Commonwealth acknowledges that the prudent management of the cash flows of a business organisation will require that some funds be accumulated in reserve to meet exigencies and contingencies. Accordingly, the Commission may accumulate from the amounts under subparagraph 2 of Schedule 1 funds to the equivalent of 2 months' Commonwealth funding, or such other sum as may be approved by the Commonwealth in writing as an operational cash flow contingency.
- 5.3 The Commission will provide performance information to the Commonwealth in accordance with the arrangements set out at Schedule 4 to this Agreement.
- 5.4 The Commission will meet with the Commonwealth as necessary, and at least 3 times each year, to discuss the Commission's performance in providing legal assistance for Commonwealth matters.
- 5.5 Levels of outputs and prices specified in Schedule 1 will be reviewed at the end of the first year and may be reviewed annually thereafter as part of the arrangements in sub-clause 5.4 and, subject to the agreement of both parties, Schedule 1 may be amended accordingly. No such amendments shall be made without consultation between the State, the Commission and the Commonwealth. Any changes will be made by formal notification in writing to the State and the Commission. Changes will not take effect until three months after written notice is given, or such shorter time as may be agreed between the Commonwealth, the State and the Commission.
- 5.6 Schedule 1 may be amended more frequently than on an annual basis, and subject to the agreement of both parties, where:
- (a) there is a change to the Commonwealth's priorities and guidelines at Schedules 2 and 3; or
  - (b) a case is not accepted for funding under Criminal Law Guideline 8 of Schedule 3; or

(c) the Commonwealth requires an audit under clause 6.3 of this Agreement and also requires that the cost of that audit be borne by the Commission out of Commonwealth funds;

and the State or the Commission notifies the Commonwealth of the need for amendment of the Schedule. No such amendments shall be made without consultation between the State, the Commission and the Commonwealth. Any changes will be made by formal notification in writing to the State and the Commission. Changes will take effect within such time as may be agreed between the Commonwealth and the Commission.

5.7 It is the responsibility of the Commission to manage funds to meet Commonwealth priorities identified at Schedule 2.

5.8 The broad framework of the performance information provisions of Schedule 4 may be reviewed from time to time by consultation at the request of the Commonwealth, of the State or of the Commission. To ensure national consistency of approach in the requirements of Schedule 4, the Commonwealth will consult with all legal aid commissions. Any variation resulting from such a review will be made by formal notification in writing to each State and Commission. Changes will not take effect until three months after written notice is given, or such shorter time as may be agreed between the Commonwealth, the State and the Commission.



Commonwealth and such auditor must have access to the Commission's relevant records.

- 6.4 In addition to subclauses 6.2 and 6.3 the Commonwealth will require a written certification from the Commission that the performance information provided by the State and the Commission is in accordance with the requirements set out in Schedule 4 and demonstrates that they have delivered outputs in accordance with the terms of this Agreement.

#### **Notice of Deficiency:**

- 6.5 Where, following the receipt of the material provided under subclauses 6.2, 6.3 and 6.4 the Commonwealth identifies any significant deficiencies with the operation of the Agreement, it shall notify the State and the Commission, in writing, of (a) the details of those deficiencies and (b) request the State and the Commission to take remedial action to overcome those deficiencies.
- 6.6 The Commonwealth will require either the implementation of satisfactory remedial action, or steps towards the implementation of remedial action, to be undertaken within 3 months of the date of the notice.

#### **7. SUSPENSION AND TERMINATION**

##### **Notice of Suspension**

- 7.1 Where notice of deficiency in the operation of the Agreement has been given under clause 6.5 and no satisfactory response has been received within 3 months from the date of the notice, the Commonwealth may give two months' notice to the State and the Commission of the proposal to suspend all or any part of the two quarterly payments next due from the Commonwealth to the State or the Commission after the expiration of the two months' period covered by the notice.
- 7.2 Where the Commission has failed to provide performance information to the Commonwealth in accordance with clause 3 of Schedule 4; the Commonwealth may, in accordance with sub-clause 3.4 of that Schedule, give two months' notice to the State and the Commission of the proposal to suspend the next quarterly payment.
- 7.3 On the application of either sub-clause 7.1 or 7.2, the Commonwealth Minister will also give to the State Minister written notice of the suspension and, where applicable, the notice will specify any remedial action required.

##### **Cancellation of Suspension**

- 7.4 Where notice has been given under sub-clauses 7.1 or 7.2, and the Commonwealth is satisfied, before the expiration of the notice period, that the reason for the notice of suspension has been remedied, the Commonwealth will give written notice to the Commission and the State Minister that the proposed suspension will not proceed.

## **Effect of Suspension**

- 7.5 The effect of a suspension of funds pursuant to sub-clauses 7.1 or 7.2 shall be that payment in advance will not be made, and that after the suspension has been completed, payment in arrears will occur. Payment in advance will recommence with the next due quarterly payment.

## **Termination**

- 7.6 Either party may terminate this Agreement by giving twelve months' notice of termination, in writing, setting out the reasons for that termination. A series of suspensions of payment in advance might constitute a basis upon which termination of the Agreement might occur.
- 7.7 In the event of termination, the Commonwealth shall be liable for the net liability of the Commission in relation to the provision of services under this Agreement. The net liability to be borne by the Commonwealth will be a matter for agreement between the parties following the issue of a notice of termination under subclause 7.6 and will include any outstanding obligation in relation to Commonwealth matters. In calculating the net liability, the liabilities incurred as a result of the termination shall be taken into account.
- 7.8 The liabilities of the Commission will include any outstanding obligation in relation to the provision of legal assistance in Commonwealth matters; any payments to be made in relation to reassignment or retrenchment of staff; any costs or penalties incurred in relation to accommodation changes and any loss incurred on premature retirement of assets. The assets of the Commission which will be taken into account will not include assets which are clearly of State origin. Jointly provided assets may be proportionately attributed to the State and Commonwealth in an equitable manner to be determined as part of the termination agreement.
- 7.9 Where termination occurs under subclause 7.6, the State is to provide the Commonwealth with sufficient financial and other material and records so as to enable the Commonwealth to be satisfied as to the reasonableness of the quantum of the liability being sought. To enable the Commonwealth to be satisfied as to the reasonableness of the quantum of the liability, an independent auditor may be appointed by the Commonwealth at its expense, to prepare a report on the claimed liabilities, and such auditor shall have access to the Commission's records giving rise to the liability.

## **8. GENERAL PROVISIONS**

### **Liaison**

- 8.1 The person holding, occupying or performing the duties of the office of First Assistant Secretary, Family Law and Legal Assistance Division in the Attorney-General's Department or some other person nominated from time to time by the Secretary of that Department, shall be the Liaison Officer for the Commonwealth in connection with this Agreement.
- 8.2 The person holding, occupying or performing the duties of the office of Managing Director of the Commission shall be the Liaison Officer for the Commission and the State in connection with this Agreement.

## Notices

8.3 Any notice to be given under this Agreement shall be in writing and delivered or sent by post or facsimile transmission addressed as follows:

(a) in the case of notice to the Commonwealth:

The Secretary  
Attorney-General's Department  
National Circuit  
CANBERRA ACT 2600  
Facsimile No. (02) 6250 5924

(b) in the case of notice to the State Minister:

The Attorney-General of New South Wales  
Level 20, Goodsell Building  
Chifley Square  
SYDNEY NSW 2000  
Facsimile No. (02) 9228 7301

(c) in the case of notice to the Commission:

The Managing Director  
Legal Aid Commission of New South Wales  
PO Box K847  
HAYMARKET NSW 1238  
Facsimile No. (02) 9219 5935

## Dissemination of information

8.5 The Commonwealth, the State and the Commission will freely and fully disseminate information to each other regarding the provision of legal assistance so as to promote the advancement of the Commission and of legal assistance generally.

## Disputes

8.6 Any dispute that arises between the Commonwealth, the State and the Commission which cannot be resolved at officer level is to be referred in the first instance to the Secretary, the Managing Director and the Chairperson of the Commission for resolution.

8.7 If the dispute still cannot be resolved under subclause 8.5 within a reasonable time, the matter will be referred to the Commonwealth Minister for negotiation with the State Minister on resolution.

## Variation

8.8 Other than as provided for by the next sub-clause, this Agreement may be varied by agreement of the parties at any time, provided that any such variation is completed prior to the last six months before the conclusion of the Agreement. However, any variation of this Agreement is ineffective unless it is in writing and signed on behalf of both parties.

8.9 Variation of Schedules 2 and 3 will take place in accordance with sub-clauses 3.6 and 3.7.

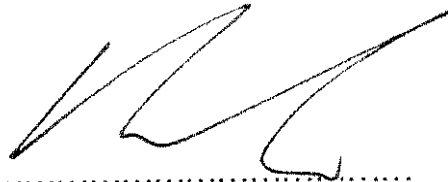
**EXECUTED** by the Commonwealth and the State on the date set out at the commencement of this Agreement

SIGNED by Daryl Robert Williams,  
Attorney-General on behalf of the  
Commonwealth of Australia

)  
) *Daryl Williams*  
).....

(date of signing) *14 August 2000* )  
)

SIGNED by the Hon Bob Debus MLA,  
Attorney General on behalf of New  
South Wales

)  
)   
).....

(date of signing) *3 August 2000* )  
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## SCHEDULE 1

### SERVICE PURCHASING ARRANGEMENTS

1. The Commonwealth will provide the funds set out in Table 1 below for the Commission to provide outputs in accordance with the terms of this Agreement.

Table 1

Financial Year	2000-2001	2001-2002	2002-2003	2003-2004
Annual Funds (\$)	33,719,000.00	36,337,000.00	38,956,000.00	41,574,000.00

2. The Commonwealth will pay the amount due under Table 1, in four equal quarterly payments in advance. Payment will be made to the Commission.

3.1 In the 2000-2001 financial year, the estimated amount of Commonwealth funds available for expenditure on outputs will be \$33,753,000.00. This comprises:

Annual Funds	33,719,000.00	
Estimated Contribution Income <sup>1</sup>	1,600,000.00	
Estimated Interest on Commonwealth Funds <sup>2</sup>	300,000.00	
<u>Sub-total</u>	35,619,000.00	
LESS		
Carryover of 1999-2000 Deficit <sup>3</sup>		418,000.00
Accrued Liabilities - Cases Approved Pre 1-July 1997 <sup>4</sup>		906,000.00
Contingency Reserve - Expensive Cases <sup>5</sup>		542,000.00
<u>TOTAL</u>		<u>33,753,000.00</u>

3.2 These funds are inclusive of the fee of \$633,000.00 for strategic services for 2000-01 which the Commonwealth has agreed to pay the Commission for giving effect to this agreement. This fee will be reviewed annually in accordance with sub clause 5.5 of the Agreement.

3.3 An amount of \$906,000.00 representing the Commonwealth's accrued liabilities arising from grants made by the Commission prior to 1 July 1997, is to be offset from the annual funds. That amount is only for 2000-01. The issue of payment of further accrued liability will be reviewed in May 2001 in accordance with sub clause 5.5 of the Agreement.

3.4 An amount of \$542,000.00 is to be retained in a contingency reserve fund, to be applied against exceptional unforeseen expenditure arising from the conduct of a case funded by a grant of legal assistance. That amount is only for 2000-01. The need for and the amount held in reserve will be reviewed in May 2001 in accordance with sub clause 5.5 of the Agreement.

<sup>1</sup> Based on calculations provided by the Commission in correspondence dated 28 July 2000.

<sup>2</sup> Based on calculations provided by the Commission in correspondence dated 28 July 2000.

<sup>3</sup> Amount of carryover of deficit approved by the Commonwealth in correspondence dated 20 July 2000.

<sup>4</sup> See explanation at sub-paragraph 3.3.

4. Outputs comprise of the following:

### **Information**

Information is brief information/advice provided through a designated information/advice facility eg. Telephone, e-mail, web site or video link.

### **Legal Advice & Minor Assistance**

Advice is advice on legal matters provided by lawyers or paralegals and includes substantive advice provided by telephone, e-mail or video link. It also includes advice provided in the course of taking an application for legal aid. Each advice to a client is recorded separately.

### **Community Legal Education**

A range of services designed to provide information about rights and responsibilities under the law. Publications, web sites, classes and information sessions are the most common forms of Community Legal Education at this stage.

#### *Classes*

A class is a session whereby a group of individuals are provided with advice and/or minor assistance to deal with their own legal problem.

#### *Information sessions*

An information session is a general information session about legal aid and/or the law which is not designed to provide advice for individuals to deal with their own problem.

### **Primary Dispute Resolution**

Means the types of services referred to in the definition of primary dispute resolution (PDR) in clause 1.1 of the Agreement. A PDR service funded as a family law stage of matter is considered legal representation and should not be counted as a separate output.

□

### **Duty Lawyer services**

Duty lawyer services are legal services provided by a lawyer attending a court, tribunal or place of detention at a court. These services consist of appearing on behalf of a person or giving legal advice to a person at that place in relation to a court appearance that same day, otherwise than by prior arrangement with that person.

### **Legal Representation**

The term legal representation is used to describe the service(s) provided in respect of an approved application for legal assistance. Legal representation may include the provision of PDR.

An application is a formal written request, in the manner and form prescribed for a grant of legal assistance, which may encompass more than one matter.

### **Assignments**

The assignment function is defined in clause 1.1 of the Agreement.

5. Table 2 below sets out the agreed levels of outputs to be purchased and the prices for those outputs.

Table 2

Outputs to be purchased	No.	Price \$
Information	50,000	11.50
Legal advice & minor assistance	30,000	33.00
Community legal education	300	280.00
Primary dispute resolution <sup>6</sup>	2,000	740.00
Duty lawyer services	1,300	75.00
Assignments	12,500	340.00
Legal representation	9,012	2,175.00
Family <sup>7</sup>		
Civil	526	5,171.00
Veterans	500	2,000.00
Other		
Criminal <sup>8</sup>	287	8,070.00

<sup>6</sup> PDR will be included as grants of aid for family law under legal representation as of 1 October 2000. Revised figures will be provided by the Commission by 1 October 2000. This figure is to be reviewed at the first scheduled meeting pursuant to sub-clause 5.4 of the Agreement.

<sup>7</sup> Estimates to be provided by stage of matter from 1 October 2000.

<sup>8</sup> Criminal includes legal aid commission contributions to cases where an application may be made under



## Schedule 2 Commonwealth priorities

### 1 Commonwealth priorities

- (1) Commonwealth funds may only be used to provide legal assistance for a matter that is a Commonwealth priority.
- (2) Commonwealth priorities are set out in this Schedule.

### 2 Family law priorities

- (1) A 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 priority if it relates to any of the following:
  - separate representation of children;
  - parenting plans and orders;
  - location and recovery orders;
  - any other orders relating to children;
  - injunctions relating to family violence;
  - child support;
  - child and spousal maintenance;
  - dissolution and nullity of marriage;
  - property proceedings.
- (2) Generally, these matters are of equal priority.
- (3) However, consideration must be given to whether the matter is urgent.

#### *Priority for urgent matters*

- (4) In deciding whether to grant legal aid for a family law matter, the highest priority must be given to protecting the safety of a child, or a spouse, who is at risk.
- (5) Urgent legal assistance should be granted in relation to an application for an interim order or injunction if:
  - (a) a child's safety or welfare is at risk; or
  - (b) the applicant's safety is at risk; or
  - (c) there is an immediate risk of removal of a child from Australia or to a remoter geographic region within Australia; or
  - (d) there is a need to preserve assets; or
  - (e) other exceptional circumstances exist.

#### *Priority for non-urgent matters*

- (6) If a matter is not urgent, legal assistance should not be granted until the parties have separated for a sufficient period of time to enable them to be sure that there are real issues in dispute (referred to by some Commissions as the *six-week rule*).
- (7) Legal assistance may be granted for an application for an interim order or injunction if the Commission considers that the application is warranted.

*Processes other than litigation must be considered*

- (8) Consideration must be given to resolving family law matters through the use of a primary dispute resolution process.
- (9) A primary dispute resolution process (*PDR process*) means a procedure or service for the resolution of disputes out of court, and includes the following:
- (a) counselling;
  - (b) mediation;
  - (c) conferencing, including in-house conferencing;
  - (d) arbitration; and
  - (e) other means of conciliation or reconciliation.
- (10) In appropriate circumstances, applicants for legal assistance should be required to use a PDR process before any grant of legal assistance is made for court proceedings.
- (11) If the applicant for assistance is strongly opposed to participating in a PDR process:
- (a) the applicant must be given the opportunity to give reasons; and
  - (b) the Commission should have regard to the reasons when considering whether to require the applicant to use a PDR process.
- (12) A PDR process is usually appropriate if:
- (a) the issues for resolution are substantial and there has not been a court order, registered parenting plan, or PDR process in relation to the issues in dispute in the last 2 years, unless there has been a material change in circumstances; and
  - (b) the matter does not have an urgency priority.
- Note* For priority for urgent matters, see clause 2.
- (13) A PDR process is usually not appropriate where:
- (a) there are investigations or proceedings about child abuse; or
  - (b) a party's safety or ability to negotiate effectively is jeopardised by behaviour such as violence, intimidation, control or coercion, or a history of such behaviour; or
  - (c) there is documentary or other clear evidence establishing the refusal or unwillingness of the other party to attend; or
  - (d) there are practical difficulties which cannot be overcome, such as the geographical distance between the parties or the non-availability of a PDR process in the applicant's region.
- (14) If there have been previous investigations or proceedings involving violence or child abuse:
- (a) the Commission must determine if a PDR process is appropriate in the particular case; and
  - (b) if the Commission determines that it is appropriate, it must attempt to ensure that it is reasonable to proceed and that a party's safety or ability to effectively negotiate will not be jeopardised.

3

### **Criminal law priorities**

- (1) The representation of a person to defend a charge arising under a Commonwealth Act (including the Corporations Law of any State or Territory) is a Commonwealth priority if:
  - (a) the charge is to be dealt with on indictment; or
  - (b) the charge is to be dealt with summarily and:
    - (i) the applicant has a reasonable prospect of acquittal; and
    - (ii) there is a real prospect that the applicant, if convicted:
      - (A) would be imprisoned; or
      - (B) would not be able to continue in his or her usual occupation.
- (2) If a charge mentioned in subclause (1) is brought together with a charge under a State or Territory law, Commonwealth funds may be used to fund a grant of legal assistance on a pro rata basis.
- (3) Pleas of guilty, in the circumstances set out in clause 1.2, Part 3.

4

### **Civil law priorities**

A matter arising under a Commonwealth Act is a Commonwealth priority if it relates to any of the following:

- (a) a decision affecting the receipt or amount of:
  - (i) Commonwealth employees' compensation; or
  - (ii) a Commonwealth pension, benefit or allowance (including a pension, benefit or allowance under Commonwealth legislation relating to war veterans);
- (b) a decision or action by a Commonwealth authority in relation to a person that has a real prospect of affecting the person's capacity to continue in his or her usual occupation;
- (c) discrimination;
- (d) migration, but only in the circumstances set out in guideline 3, Part 4;
- (e) consumer protection.

5

### **Other matters taken to be Commonwealth priorities**

- (1) A matter that is not a Commonwealth priority within clause 2, 3 or 4 is taken to be a Commonwealth priority if:
  - (a) The matter arises under Commonwealth law and Commonwealth funds are available for the grant of legal assistance for the matter; and
  - (b) either:
    - (i) the matter is a kind of matter for which the Commonwealth Minister or his or her delegate has previously given written approval for the grant of legal assistance; or
    - (ii) the Commission considers that one or more special circumstances set out in subclause (2) exist in relation to the matter.
- (2) 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 allegations of domestic violence have been made).

# Schedule 3 Commonwealth guidelines

## Part 1 General

### 1 Applying the guidelines, means test and merit test

- (1) Legal assistance may be granted for applications that:
  - (a) arise under Commonwealth law and are within a Commonwealth priority set out in Schedule 2;
  - (b) meet any guidelines set out in this Schedule that may be relevant to the application;
  - (c) meet the means test (unless otherwise specified in the guidelines); and
  - (d) meet the merits test (unless otherwise specified in the guidelines).
- (2) In usual cases, the criteria specified in subclause (1) should be applied in that order.
- (3) If a matter is within the criteria, the Commission must determine, in accordance with the guidelines, whether legal assistance is to be granted, and if so, the nature and extent of the assistance.
- (4) The Commission must also consider available funds and competing priorities in making the decision.
- (5) If there is no Commonwealth guideline relating to a Commonwealth priority, the Commission may grant assistance in the manner, and to the extent, it considers appropriate in that priority area.
- (6) In cases involving domestic violence in relation to an applicant or a child, any decision made by the Commission about whether to grant assistance, and the level of assistance, should have regard to any guidelines or procedures used in determining grants of assistance for domestic violence matters under relevant State or Territory legislation.

*Note* This guideline is not intended to pick up matters which are properly classed as State or Territory matters. The intention is to ensure consistency of treatment for domestic violence matters, whether State/Territory or Commonwealth.

- (7) The Commission must conduct litigation, to which these guidelines apply, in a cost-effective manner.

### 2 The means test

Unless specifically varied by the Commonwealth, the means test to be applied is the means test used by the Commission at the date of the application for legal assistance.

*Note* The Commonwealth's strong preference is for the Commission to use the simplified means test developed for Legal Aid Queensland, and for this test to be adopted nationally.

### 3 The merits test

- (1) The merits test is to be applied to all initial applications for assistance, extensions and appeals, except as specified in the guidelines.

- (2) The merits test has three elements:
- (a) a test of the legal and factual merits (the *reasonable prospects of success* test);
  - (b) the *prudent self-funding litigant* test; and
  - (c) the *appropriateness of spending limited public funds* test.
- (3) All three tests must be met to satisfy the merits test.

#### 4 **The *reasonable prospects of success* test**

The reasonable prospects of success test is met if, on the information, evidence and material provided to the Commission, it appears that the proposed action, application, defence or response for which legal assistance is sought is more likely than not to succeed.

#### 5 **The *prudent self-funding litigant* test**

The prudent self funding litigant test is met only if the Commission considers that a prudent self-funding litigant would risk his or her funds in the proposed proceedings.<sup>1</sup>

#### 6 **The *appropriateness of spending limited public legal aid funds* test**

The appropriateness of spending limited public legal aid funds test is met only if the Commission considers that the costs involved in providing the assistance are warranted by the likely benefit to the applicant or, in appropriate circumstances, the community.<sup>2</sup>

#### 7 **Test Cases**

The Commission must not grant legal assistance for a test case, relating to a Commonwealth matter, unless the Commission has first referred the request for assistance to the Commonwealth Attorney-General's Department for consideration in accordance with the Commonwealth Public Interest and Test Cases Scheme.

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<sup>1</sup> 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 which 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.

<sup>2</sup> The Commonwealth has numerous competing interests for its legal aid resources. Accordingly, as part of its merits test, it needs to be satisfied that the matter for which an initial grant of legal assistance or an extension is sought, is an appropriate expenditure of public legal aid funds. Examples of what are likely to be considered inappropriate expenditure of legal aid funds, are:

- Proposed applications to the Court to dispense with a spouse's consent to a passport, so that the applicant and child can travel overseas. The Commonwealth considers that the contingent documentary costs of overseas travel should form part of the overall expense of the trip, and is not an appropriate matter in which to grant legal assistance.
- Some aspects of contact and property disputes, where the issue appears to be of such minor significance in relationship to the legal costs which will be incurred in providing assistance. For example, in a contact dispute, who will pay for the bus or taxi fare etc, who washes the clothes, or provides the morning or afternoon tea etc. Again, the Commission should decline to use its funds for such matters.

## Matters referred by Attorney-General under subsection 69 (3) *Judiciary Act 1903*

These guidelines apply to matters referred to Commissions by the Attorney-General under subsection 69 (3) of the *Judiciary Act 1903*.

## Part 2 Family Law guidelines

### Guideline 1 Separate representation of children

#### 1.1 If all parties receiving legal assistance

- (1) Legal assistance may be granted for separate representation of a child in proceedings in relation to which all parties are receiving legal assistance if:
  - (a) a court requests the Commission to arrange the separate representation; and
  - (b) the Commission decides that it is reasonable to provide separate representation.

*Note* A court order that a child's representative be appointed in a matter does not impose an obligation on a Commission to grant legal assistance for separate representation.

- (2) Assistance is not subject to the means test.

#### 1.2 If a party is not receiving legal assistance

- (1) Legal assistance may be granted for separate representation of a child in proceedings in relation to which a party is not receiving legal assistance.
- (2) Assistance is not subject to the means test.
- (3) If legal assistance is granted for separate representation in proceedings in relation to which a party is not receiving legal assistance, the Commission must:
  - (a) notify each party not receiving legal assistance that each may be required to pay an equal portion of the total costs and disbursements of the separate representative; and
  - (b) unless the Commission decides to waive or reduce the payment, require each party to pay the amount in the manner decided by the Commission, having regard to the party's capacity to pay.

*Note* The requirement for payment does not apply to proceedings relating to special medical procedures (see guideline 9).

- (4) If a party refuses or fails to pay the amount required by the Commission, legal assistance should continue to be provided on the condition that the separate representative seek an order for costs against the party at an appropriate time in the proceedings.

### Guideline 2 Parenting orders

#### 2.1 Application for parenting order

Legal assistance may be granted for an application for parenting orders if:

- (a) there is a dispute about a substantial issue; and

(b) either:

- (i) recent PDR processes have not resolved the dispute, or the other party has refused or failed to attend PDR processes on the issue; or
- (ii) PDR processes are impractical or inappropriate.

*For example*, PDR processes may be inappropriate if there is a likelihood or history of violence or abuse to the applicant or a child. See subclause 2 (13) of Schedule 2 for other examples of when a PDR process is usually inappropriate.

## 2.2 Application to discharge or vary parenting plan or order

(1) Legal assistance may be granted for an application to discharge or vary a registered parenting plan, or parenting order, if:

- (a) there has been a material change in circumstances since the parenting plan was registered, or the order was made; and
- (b) there is a dispute about a substantial issue; and
- (c) either:

- (i) recent PDR processes have not resolved the dispute, or the other party has refused or failed to attend PDR processes on the issue; or
- (ii) PDR processes are impractical or inappropriate.

*For example*, PDR processes may be inappropriate if there is a likelihood or history of violence or abuse to the applicant or a child. See subclause 2 (13) of Schedule 2 for other examples of when a PDR process is usually inappropriate.

(2) However, if the material change in circumstances was caused by the applicant, the Commission must consider the circumstances surrounding that change in determining whether it is appropriate to grant assistance.

(3) Legal assistance may also be granted if there are additional circumstances which suggest that the application is likely to be successful.

*For example*, those circumstances may be:

- the likelihood of violence, or physical or mental harm, to the applicant or a child;
- the removal or risk of removal of a child from an applicant who has primary residence responsibilities;
- the removal or risk of removal of a child from the jurisdiction of the Court;
- 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.

## 2.3 Third parties

Legal assistance may be granted to a party who is not a parent in proceedings relating to parenting orders if:

- (a) the party is significant to the care, welfare and development of the child; or
- (b) the Commission considers it to be in the child's best interests.

*For example*, it may be in the child's best interests if the child's safety or welfare is at risk.

## 2.4 Care and protection proceedings

Legal assistance may be granted for parenting orders under the *Family Law Act 1975*, even if there are current care or protection orders, or proceedings under a child welfare law, in respect of the child.



## Guideline 3 Child maintenance and child support

### 3.1 Means tested assistance — stage 1 matters

- (1) A matter is a *stage 1 matter* if it:
  - (a) relates to a child born before 1 October 1989; and
  - (b) the parents of the child either never lived together or separated before 1 October 1989; and
  - (c) the child does not have a full blood sibling born on or after that date.
- (2) The following services may be provided for a stage 1 matter:
  - (a) if the applicant for assistance is on a low income seeking maintenance or increased maintenance — a Child Support Unit or Service; and
  - (b) if the applicant for assistance is a liable parent making application for variation, discharge or suspension of maintenance — a Liable Parents Information Service.
- (3) For the provision of these services, the matter is usually referred to one of the Commission's services or to a community legal centre service.
- (4) However, legal assistance may be granted for a stage 1 matter if the Commission decides that it is not appropriate to refer the matter to one of the Commission's services or a community legal centre service.

*For example*, referral may not be appropriate because:

- the case is very complex;
- the applicant needs urgent orders;
- it is impractical for the applicant to use a Commission or community legal centre service;
- the applicant will not benefit from attending a Commission or community legal centre service because of a language or literacy problem, or an intellectual, psychiatric or physical disability;
- legal assistance has been granted for other proceedings and maintenance is ancillary to, but cannot be separated from, those proceedings;
- the child is over the age of 18;
- the applicant is defending an application for a child maintenance order or increased maintenance, and the case is complex or urgent;
- paternity is in dispute.

### 3.2 Stage 2 matters

- (1) A matter is a *stage 2 matter* if it relates to:
  - (a) a child born on or after 1 October 1989;
  - (b) a child born before 1 October 1989 and whose parents separated after that date; or
  - (c) a child who has a full blood sibling born on or after 1 October 1989.
- (2) Child support payments for these children are assessed and collected by the Child Support Agency, unless the payee elects otherwise under the *Child Support (Registration and Collection) Act 1988*.
- (3) Legal assistance may be granted in a stage 2 matter for an application for a departure order in circumstances where one of the Commission's services or a community legal centre is unable to assist, if:
  - (a) the applicant seeks departure from a review decision made before 1 July 1992;

- (b) the applicant wishes to oppose an application for a departure order; or
- (c) the applicant is not satisfied with the decision of a departure from assessment officer.

The grant of assistance should usually be limited to proceedings in State or Territory Magistrates' Courts and the Federal Magistrates Service, unless such proceedings are not available.

### **3.3 Applicant children**

Legal assistance may be granted, for a stage 1 or 2 matter, to a child seeking maintenance, child support or variation of a maintenance or child support order, if the child is the most appropriate person to seek the order.

## **Guideline 4 Paternity**

### **4.1 Application relating to paternity**

- (1) Legal assistance may be granted to an applicant seeking or opposing a finding of paternity, or seeking an order for parentage testing, if:
  - (a) the Commission's Child Support Unit or Service or some other appropriate service cannot assist; and
  - (b) either party denies that the male party is the child's father; and
  - (c) the male party's whereabouts are known; and
  - (d) in a case where a finding of paternity is sought for child maintenance or child support matters — there is good reason to believe that the other party has the capacity to pay maintenance for the child.
- (2) If a male applicant denies he is the father of the child, he must give the Commission adequate reasons to support the denial and agree to submit to parentage testing.
- (3) Legal assistance granted for parentage testing should be granted on the condition that the applicant seek an order for the costs of the testing, unless that other party is also receiving legal assistance.

## **Guideline 5 Spouse maintenance**

### **5.1 Application for spouse maintenance**

Legal assistance may be granted for an application for orders for spouse maintenance, or to increase spouse maintenance, if:

- (a) the applicant cannot obtain the orders by consent; and
- (b) the other party's whereabouts are known or substituted service is likely to be successful; and
- (c) there is good reason to believe that the other party has the capacity, or is likely to have capacity in the future, to pay maintenance, or increased maintenance; and

## 5.2 Defending application for spouse maintenance

Legal assistance may be granted to defend an application for spouse maintenance, or for increased spouse maintenance, if:

- (a) it is unlikely that the court will make an order for the amount which the other party seeks; and
- (b) the applicant cannot adequately defend the application without legal assistance.

## 5.3 Application for reduction in spouse maintenance

Legal assistance may be granted for an application for reduction in spouse maintenance if:

- (a) the application is likely to be successful; and
- (b) the applicant cannot adequately prepare the application without legal assistance.

## Guideline 6 Arrears of maintenance or child support

### 6.1 Proceedings for arrears of maintenance or child support

Legal assistance may be granted in proceedings relating to arrears of child or spouse maintenance, or child support, if:

- (a) the applicant cannot adequately prepare or present the case without legal assistance, and assistance cannot be obtained from a State or Territory Magistrates' Court, the Federal Magistrates Service, the Family Court, the Child Support Agency or any other appropriate organisation; or
- (b) another family law problem is involved.

*For example*, the parties may be seeking parenting orders.

## Guideline 7 Dissolution (divorce) and nullity of marriage

### 7.1 Applications for dissolution or nullity of marriage

Legal assistance may be granted for an application relating to dissolution of marriage or nullity if:

- (a) the application is imperative; or
- (b) the applicant suffers particular hardship; or
- (c) certain aspects of the application warrant legal assistance, and because of this complexity it would not be reasonable to expect the applicant to conduct the proceedings without legal representation.

*Examples:*

An application may be imperative if the dissolution or nullity would end continued harassment or ill-treatment of the applicant.

An applicant may suffer particular hardship if the applicant has a disability or disadvantage that prevents self-representation.

The following may warrant legal assistance:

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

## **Guideline 8 Property**

### **8.1 Assistance for certain property disputes**

Legal assistance may be granted for the resolution of a property dispute in circumstances where there is evidence that the separation of the parties is final, if:

- (a) for a dispute relating to real estate:
  - (i) the applicant is likely to retain the matrimonial home; and
  - (ii) the applicant cannot borrow enough funds to both buy the other party's interest in the matrimonial home, and pay the anticipated legal costs of the proceedings (demonstrated by the applicant providing a letter from a lending authority, which confirms a loan application and advice of the authority as to the amount which can be borrowed); or
- (b) the dispute relates to the preservation of assets, or to funds from which the applicant can only receive a deferred benefit, such as superannuation benefits.

*Note* Final separation of the parties is normally demonstrated by the parties being separated for at least 6 months.

### **8.2 Limitations on assistance**

- (1) For a dispute relating to real estate, legal assistance for representation is limited to proceedings where the applicant's equity in the matrimonial property in dispute is valued at less than \$100,000.
- (2) Assistance will usually be for proceedings in the State or Territory Magistrates' Court or the Federal Magistrates Service if that is the ordinarily appropriate forum.
- (3) Legal assistance for property matters, other than applications mentioned in paragraph 8.1 (b), may only be granted if the Commission has decided that it is appropriate for assistance to be granted for other related family law matters.
- (4) However, unless there is also a domestic violence issue involved, assistance should not be granted if the only other matter is spouse maintenance.

## **Guideline 9 Special medical procedures**

### **9.1 Separate representation**

- (1) Legal assistance should be granted for the separate representation of a child in any Family Court case relating to special medical procedures (including sterilisation).
- (2) Assistance is not subject to the means test.
- (3) The Commission must not try to recover any of the costs of the child's representative from the child's parents, whether they are legally assisted or not.

### **9.2 Assistance for parents**

Subject to the means test, legal assistance must be granted to the parents of a child in any Family Court case relating to special medical procedures (including sterilisation).

## Guideline 10 Agreements, plans and consent orders

If the parties to a family law matter agree on arrangements, assistance may be granted to register an agreement, parenting plan or consent orders, if:

- (a) formal court orders are necessary; and
- (b) the applicant cannot obtain assistance in preparing and registering the agreement, plan or order, from one of the following:
  - (i) a registrar of the State or Territory Magistrates' Court, the Family Court or the Federal Magistrates Service;
  - (ii) a community legal centre; or
  - (iii) an advice service.

## Guideline 11 Enforcement of final orders and appeals

### 11.1 Enforcement of final orders

- (1) Assistance may only be granted for enforcement proceedings that concern a Commonwealth priority or priorities.
- (2) When applying the merits test, the Commission must consider the behaviour of all of the parties since the making of the orders sought to be enforced.
- (3) For the purpose of calculating and applying the family law costs management guidelines, proceedings to enforce final orders are to be treated as a separate matter to previous proceedings.
- (4) Subject to clause 12.3, a grant of legal assistance for the costs of proceedings to enforce final orders is limited to \$2,000.
- (5) If assistance is granted for proceedings to enforce final orders, the applicant must seek a costs order against the respondent, unless the Commission considers that it would not be appropriate to do so.

### 11.2 Appeals

- (1) Legal assistance may be granted for appeals.
- (2) If the applicant is the respondent to an appeal, the appeal is to be treated as a new matter for the purposes of the costs management guidelines.

*Note* The provisions of the *Federal Proceedings (Costs) Act 1981* must also be taken into account.

## Guideline 12 Costs management – family law matters

### 12.1 General

- (1) In this guideline:

*a 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 of a matter* are the total costs paid in the matter (taking into account the costs paid by any other legal aid body, if the matter has been transferred from one or more States or Territories), less any contributions paid or costs recovered.

*stages of matter model* means the stages of matter model for family law matters set out in clause 12.5.

- (2) Costs management principles in this guideline apply to all Commonwealth family law matters for which the Commission grants aid, whether or not the matters are funded according to the stages of matter model.

## **12.2 Costs limitation**

- (1) Payment of costs under the Commission's usual costs scales for legal assistance in family law matters (other than proceedings to enforce final orders) that are commenced after 1 July 1998, are limited to:
  - (a) party professional costs of \$10,000;
  - (b) child representative's costs of \$15,000.
- (2) The amounts in paragraphs (1) (a) and (b) include counsels' fees, expert reports and other disbursements (except interpreter and translator fees, rural travel and accommodation costs).

*Note* For limits to assistance for costs of proceedings to enforce final orders, see clause 11.1.

## **12.3 If costs likely to exceed limit**

- (1) If it is likely that the costs in any grant of legal assistance will exceed the amounts in paragraph 11.1 (4) or clause 12.2, the case should be handled in-house if possible.
- (2) If the matter cannot be handled in-house, the Commission must consider alternative means of funding.

*For example*, using retained counsel or negotiating a fee package so that the matter may be handled by a private practitioner.
- (3) If, as an alternative means of funding, the Commission negotiates a fee package, it should be subject to a strict limit on costs settled with the service provider.
- (4) However, the Commission may extend the grant of legal assistance by an amount determined by the Chief Executive Officer after taking into account advice from the Family Court about the length of time required for the hearing of the matter.
- (5) The Chief Executive Officer is responsible for ensuring that costs are managed within the set limit.

## **12.4 Commission must provide quarterly reports**

The Commission must provide a quarterly report to the Commonwealth in relation to cases in which the actual costs and commitment exceed the amounts in paragraph 11.1 (4) or clause 12.2.

## **12.5 Stages of matter model**

### *General notes*

This model aims to assist Commissions in the financial management of family law matters.

The model may not be appropriate for all family law matters (see paragraph 12.5 (6)), however it should be used as a guide for the management of family law matters for which the model may not be wholly appropriate (see paragraph 12.5 (8)).

Commissions may determine whether funding a particular matter in accordance with the model is appropriate.

Commissions may elect to use a lump sum or maximum amount basis for funding, where this option is provided for in the Table.

### *Application of the model*

- (1) If assistance is to be granted for a family law matter, the Commission must grant aid in accordance with this model, unless the model is not appropriate for the matter.
- (2) If there is a change of solicitor, the model applies as if there were no change of solicitor and payments will be made on a pro rata basis for work completed for each stage.
- (3) If a legal aid client loses contact with the solicitor, payment for the work completed will be on a pro rata basis to be negotiated with the Commission.
- (4) If contact is re-established, funding already provided will be taken into account with the guidelines when considering any further grants of aid.
- (5) The stages of this model approximate the management of a matter in the Family Court of Australia, however the stages should be applied flexibly, and need not be applied chronologically.

### *Matters for which model may not be appropriate*

- (6) Matters for which the model may not be appropriate include:
  - (a) matters considered complex by the Commission, taking into account advice from the Family Court of Australia or the Federal Magistrates Service;
  - (b) child representation cases;
  - (c) applications for enforcement of final orders;
  - (d) interlocutory duty list applications, such as Commonwealth information orders and location orders; and
  - (e) pilot projects such as the Magellan Project.
- (7) Matters for which the model is not appropriate must be identified as soon as possible.
- (8) If the model is not appropriate, the Commission may apply particular stages of the model or variations of the stages to the matter.

*For example*, the matter may be managed by early intervention reports, alternative PDR processes, or by expediting hearings of the matter. However, repeat interim hearings should be avoided and steps should be taken to narrow the issues early.

### *Stage 1 — Primary dispute resolution*

- (9) The Commission may refer an applicant to a PDR process at any time.

*Note* The Commission must give consideration to resolving family law matters by referring an applicant for legal assistance to a PDR process, unless it is clearly inappropriate (see Schedule 2).

- (10) Timing of referral will be affected by the nature of the dispute and any need for urgent intervention.
- (11) In many cases, the PDR process will be the first stage of funding for a matter.
- (12) Legal aid granted for a PDR process must be in accordance with Stage 1 (a) or 1 (b).
- (13) If agreement is reached as part of a PDR process, the grant of aid for the PDR process extends to preparation work and work in filing consent orders.

#### *Stage 2 — Litigation*

- (14) If a substantial amount of work is completed before a grant of legal aid in the litigation stages, the fees for the matter will be reduced on a pro rata basis.
- (15) The hearing length of a trial should be estimated, taking into account the estimate given by the court at the pre-hearing conference.
- (16) If a trial exceeds the original estimates for unforeseen reasons, no additional payment will be allowed unless a decision not to make an additional payment would be clearly unjust, and a Judge certifies that up to 1 day of extra hearing time was required for the effective disposal of the case.
- (17) Any unused portions of stages before litigation can be raised only in relation to the trial (stage 5), and the unused portions may be taken into account at the discretion of the Commission.
- (18) If work is undertaken and the client cannot be found before all of the work covered by the grant of aid is completed, the solicitor may negotiate with the Commission for fees to be paid on a pro rata basis, at the discretion of the Commission.
- (19) If a matter is listed for hearing (final or otherwise) and not reached by the Court on the date set, funding outside the stage of matter grant under this model must be negotiated with the Commission.
- (20) The payment of fees for an agent used in any stage of matter must be negotiated with the Commission.

#### *Stage 3 — Post Pre-Hearing Conference and pre release of Family Report*

- (21) This stage will enable the early consideration of merit and funding for trial.
- (22) The Commission should seek early release of the Family Report if possible.

#### *Stage 4 — Preparation for trial*

- (23) This stage should be used for matters classified by the Family Court as direct, standard and complex matters, including for respondents under Hague Convention matters.
- (24) This stage is based on a negotiated maximum fee determined by the hourly rate of the Commission and the number of hours reasonably necessary to prepare for the trial.
- (25) Funding for this stage is subject to the guidelines and should be determined by the Commission on a case by case basis.



*Table*

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**Stage 1 (a): PDR early intervention stage**

<u>Allocation of hours</u>	<u>Up to</u>
• taking instructions and preparing for PDR process	2 hours
• representing client at PDR process	4 hours
• preparing consent orders, if appropriate	1 hour
<i>Total:</i>	7 hours

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**Stage 1 (b): PDR litigation intervention (at any stage)**

<u>Allocation of hours</u>	<u>Up to</u>
• representing the client at PDR process	4 hours
• preparing consent orders, if appropriate	1 hour
<i>Total:</i>	5 hours

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**Stage 2 (a): Initiating court proceedings - up to conclusion of directions hearings in the Family Court**

<u>Allocation of hours</u>	<u>Lump sum*/up to</u>
• taking instructions	
• communications	
• preparing documents	
• attending to filing and service	
• court attendance♣	
• consent order, if appropriate	
<i>Total:</i>	7 hours (Family Court)
	5 hours (State or Territory Magistrates Court)

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**Stage 2 (ab): Initiating applications to the Federal Magistrates Service**

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**Allocation of hours**

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- instructions for application and affidavit.
- court documents.
- obtaining short service.

•court attendance ♣

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*Totals:*

Documents etc.

**Lump sum\*/up to 6 hours**

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Court attendance ♣

**Up to 5 hours**

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**Stage 2 (b): Initiating court proceedings - up to conclusion of directions hearing/s including Application for Interim Relief in the Family Court**

(This is a combined grant for an Application Initiating Proceedings and an Application for Interim Relief filed at the same time.)

**Allocation of hours**

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- instructions for initiating court proceedings and for affidavits.
- court documents.
- obtaining short service.
- court attendance ♣

*Totals:*

Documents etc.

**Lump sum\*/up to 7 hours**

Court attendance ♣

**Up to 5 hours**

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**Stage 2 (c): Interim or summary hearing - as a discrete event - in the Family Court**

This stage applies to an interim application commenced as a discrete event, or a summary proceeding of a type not otherwise addressed in this fee structure. It does not include the stage 2 (a) or 2 (b) fee component. (Refer to Stage 2 (g) for application for recovery orders.)

**Allocation of hours**

---

- instructions for application and affidavit.
- court documents.
- obtaining short service.
- court attendance ♣

*Totals:*

Documents etc.

**Lump sum\*/up to 6 hours**

Court attendance ♣

**Up to 5 hours**

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**Stage 2 (d): Up to conclusion of conciliation conference (if any) in the Family Court or the Federal Magistrates Service**

**Allocation of hours**

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**Lump sum\*/up to**

- file management.
- instructions.
- court attendance ♣
- consent orders, if appropriate.

*Total:*

**3 hours**

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**Stage 2 (e): Case review (if any) in the Family Court**

**Allocation of hours**

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**Lump sum\*/up to**

- court documents - if any.
- instructions.
- court attendance ♣
- consent orders, if appropriate.

*Total:*

**3 hours**

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**Stage 2 (f): Up to Conclusion of Pre-Hearing Conference in the Family Court**

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**Allocation of hours** **Lump sum\*/up to**

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- file management.
- instructions.
- prepare client for Family Report process
- read Family Report
- court attendance♣
- consent orders, if appropriate.

*Total:*

5 hours

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**Stage 2 (g): Application for Recovery Order in the Family Court and the Federal Magistrates Service**

This stage applies to an application for a recovery order where there is an existing Court order.

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**Allocation of hours**

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- instructions.
- court documents.
- court attendance♣

*Totals:*

Documents etc.

Lump sum\*/up to 3 hours

Court attendance♣

Up to 3 hours

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**Stage 2 (h): Any subsequent appearance in the Federal Magistrates Service**

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**Allocation of hours**

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- instructions for application and affidavit.
- court documents.
- obtaining short service.

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•court attendance♣

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*Totals:*

Documents etc.

Lump sum\*/up to 6 hours

Court attendance♣

Up to 5 hours

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**Stage 3: After pre-hearing conference and before release of family report in the Family Court**

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**Allocation of hours** **Lump sum\*/up to**

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- prepare client for family report process.
- read family report.
- advise client.
- consent order if appropriate.

*Total:* 3 hours

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**Stage 4: Preparation for trial in the Family Court and the Federal Magistrates Service**

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**Allocation of hours** **Negotiated maximum fee**

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- taking instructions.
  - interviewing witnesses.
  - preparing documents.
  - prepare client for Family Report process subpoena.
  - case management guideline trial documents.
  - preparing and delivering brief to counsel.
  - read Family Report
  - conference with counsel.
  - attend list conference
- Negotiated, based on estimated preparation time worked out using the Commission's hourly rate and the Commonwealth guidelines.
- 

**Stage 5: Trial costs for solicitor in the Family Court and the Federal Magistrates Service**

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**Allocation of hours** **Lump sum\*/up to**

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- attendance each day of hearing.
- advocacy allowance, if any
- to take judgement.

*Totals:*

Each hearing date 6 hours

To take judgement and explain orders 1 hour

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**Stage 6: Appeals from the Family Court and the Federal Magistrates Service**

This stage is based on the allocation of solicitor's time only. Counsel's fees are part of disbursements.

<b>Allocation of hours</b>	<b>Lump sum*/up to</b>
• appeal to single judge of the Family Court	12 hours
• appeal to the Full Court of the Family Court	10 hours

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♣ *court attendance* includes waiting time and appearance in Court but excludes travel time. Mileage may be payable subject to the practices and rates of the Commission.

\* *lump sum* means a fixed amount for an item of work, and is calculated on the basis of the hourly rate determined by the Commission (only if the Commission elects to use lump sums).

## Part 3 Criminal Law guidelines

### Guideline 1 Summary criminal prosecutions

#### 1.1 Trial in magistrates' courts

Legal assistance may be granted for a trial in a magistrates' court if the applicant 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, actual or prospective; or
- (b) the applicant has a disability or a disadvantage which would prevent self-representation; or
- (c) conviction would be likely to result in a term of imprisonment, including a suspended term, being imposed.

#### 1.2 Guilty pleas

Legal assistance may be granted for a plea of guilty if, because of complexity or other aggravating circumstance, the Commission determines that the matter should not be dealt with by a duty lawyer service.

*For example*, an aggravating circumstance may be:

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

### Guideline 2 Committal proceedings

- (1) Legal assistance may be granted for committal proceedings which are likely to contribute to reducing the duration and cost of any subsequent proceedings.
- (2) Assistance may be provided for:
  - (a) preparing for, or appearing at, a pre-hearing conference or a committal hearing;
  - (b) identifying issues not in dispute between the parties; or
  - (c) resolving issues in negotiation with the DPP.

*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 proceedings. The fact that the committal may result in the prosecution having to disclose material aspects of its case is not intended to advantage the applicant over the prosecution.

### Guideline 3 Superior court criminal prosecutions

#### 3.1 Form of assistance

- (1) If an applicant meets the means test, some form of legal assistance must be granted for criminal matters in superior courts, and costs must be managed in accordance with this guideline.
- (2) The Commission must determine the form and extent of legal assistance to be granted according to the merits of the application.

- (3) The Commission may limit assistance to a plea of guilty, to assistance to follow a specific defence argument, or to any other form of assistance considered appropriate in the circumstances.

### **3.2 Charges on indictment**

Legal assistance may only be granted for the hearing of charges on indictment if such charges could be, and normally would be, heard summarily, and if the Commission is satisfied that compelling reasons as to why the charges will be heard on indictment have been given.

### **3.3 Funding where costs exceed \$40,000**

- (1) If the costs to the Commission of a grant of legal assistance for any one trial will exceed \$40,000, alternative means of funding must be considered.  
*For example, handling the matter in-house, using a Public Defender or retained counsel, or negotiating a fee package so that the matter may be handled by a private practitioner.*
- (2) If, as an alternative means of funding, the Commission negotiates a fee package, it should be subject to a strict limit on costs, settled in advance with the service provider.
- (3) The Chief Executive Officer is responsible for ensuring that costs are managed within the set limit.
- (4) The Commission must inform the Commonwealth of cases in which it estimates that the actual net costs or commitment, or both, will exceed \$40,000.
- (5) However, the Commission need not supply names or other information that might identify the parties.

### **3.4 Matters involving Commonwealth and State or Territory law**

- (1) Legal assistance may be granted to an applicant accused of breaches of both Commonwealth and State or Territory laws.
- (2) However, for such assistance:
  - (a) Commonwealth funds must be used if, in the nature of the charges and the course of the hearing, the matter is essentially Commonwealth;
  - (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 State or Territory; and
  - (c) if there is a substantial mix of Commonwealth and other charges, Commonwealth and State or Territory funds must be used proportionately, as determined by the Commission.

## **Guideline 4 Appeals**

### **4.1 Appeals against conviction or sentence**

Legal assistance may be granted for an applicant to appeal against conviction or sentence, if there is a strong likelihood that the conviction would be quashed or the sentence materially reduced; and

- (a) that if successful, the appeal would result in the applicant regaining his or her liberty, livelihood or employment; or



- (b) the appeal involves an important question of law.

#### **4.2 Response to Crown appeal**

Legal assistance may be granted to respond to a Crown appeal, without regard to the merits test.

#### **Guideline 5 Bail applications**

- (1) This guideline applies only to bail applications that form all or part of a grant of legal assistance.

*Note* This guideline does not apply to matters handled by the Commission's duty lawyer service.

- (2) Legal assistance may be granted for bail applications only if:
  - (a) bail is opposed by the prosecution and on the information provided there is a likelihood of bail being granted; or
  - (b) the applicant seeks to respond to an application for revocation of bail.

#### **Guideline 6 Children's Court proceedings**

Legal assistance may be granted for criminal matters in children's courts, as the Commission determines.

#### **Guideline 7 Applications arising from the decision in Dietrich's Case**

- (1) Assistance will not normally be granted to an accused person to conduct an application before a Court seeking, on the basis of the High Court's decision in *Dietrich's Case*, an adjournment or stay of the case until legal representation is available.
- (2) However, an application may be made by a Commission to the Expensive Criminal Cases Fund for an expensive criminal case, in accordance with guideline 8.
- (3) Legal assistance is not available for proceedings under section 360A of the *Crimes Act 1958* (Vic.).

#### **Guideline 8 Commonwealth Criminal Law – Expensive Cases Fund**

##### **8.1 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 criminal cases, particularly where potential stays of Commonwealth criminal prosecutions may be granted under the High Court's decision in *Dietrich's Case*.

##### **8.2 Administration of Fund**

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

- (2) Approval of an application for an allocation from the Fund is at the Department's discretion having regard to:
  - (a) the circumstances of the application;
  - (b) the likely impact that approval of the application would have on the resources of the Fund; and
  - (c) other applications to the Fund.
- (3) An allocation of funds may be made on such terms and conditions as the Department may require.

### 8.3 Application for funds

- (1) An application for an allocation from the Fund may only be made by a Legal Aid Commission (the *applicant*).
  - (2) A separate application must be made to the Department for each allocation from the Fund.
  - (3) Cases for which an application may be made include:
    - (a) a criminal conspiracy case;
    - (b) a criminal case arising under the Corporations Law; and
    - (c) a class of criminal cases which have like characteristics, and which have resulted from a change in Commonwealth legislation since 1 July 1999.  
*For example: people smuggling cases arising under the Migration Act 1958.*
- Note* Paragraphs (a), (b) and (c) are examples, and not an exhaustive list, of the types of matters that the Commonwealth is prepared to consider in applications to the Fund.
- (4) An application may be made before commencement of proceedings in an expensive case.
  - (5) An application must include sufficient information to satisfy the Department that:
    - (a) the likely cost of the case is high, and is likely to significantly affect the capacity of the applicant to implement the Commonwealth's other legal aid priorities;
    - (b) in estimating the likely cost of the case, the applicant has included details of any consultation with the prosecution about the likely direction of the trial;
    - (c) the applicant will take all necessary steps to manage the case in accordance with the Commonwealth cost management guidelines for Criminal Law matters specified in subclause 3.3 (1) of the Criminal Law Guidelines;
    - (d) the applicant has made estimates of likely expenditure on the case by financial year; and
    - (e) there is potential for a stay under *Dietrich's Case* to be granted if funds for the case are not provided.
  - (6) Before making an application, the applicant must take into account its reserves of Commonwealth funds.
  - (7) The Department must be satisfied that the applicant has, before the date of the application, been managing its funding in accordance with the Service Purchasing Agreement.

**Guideline 9    Proceeds of Crime Act 1987**

Legal assistance is not available for proceedings under the Commonwealth *Proceeds of Crime Act 1987*.

## **Part 4 Civil Law guidelines**

### **Guideline 1 Civil law cases generally**

#### **1.1 Limited initial grant**

A limited grant of legal assistance may be made available to:

- (a) investigate and report on the merits of a case; or
- (b) mediate a dispute.

#### **1.2 Further legal assistance**

Legal assistance may be granted to a party to an action if it is shown that, if the party is likely to receive damages or property if successful, the action could not reasonably be expected to be conducted under a conditional costs agreement or similar arrangement with a private practitioner, and no other scheme of assistance is available.

#### **1.3 Appeals**

Subject to the other civil law guidelines, legal assistance may be granted for appeals.

### **Guideline 2 Social Security and other Commonwealth Benefits Appeals**

#### **2.1 Representation at AAT**

Legal assistance may be granted for representation at the Administrative Appeals Tribunal if:

- (a) the applicant may incriminate himself or herself; or
- (b) the case is complicated; or
- (c) the applicant, because of a disability or disadvantage, cannot adequately prepare or present the case without legal assistance; or
- (d) the appeal raises important or complex questions of law.

#### **2.2 Appeals to AAT**

Legal assistance may be granted to obtain instructions and necessary reports, and prepare submissions for appeals to the Administrative Appeals Tribunal if:

- (a) the case concerns an overpayment over \$5,000; or
- (b) the applicant is at significant risk of prosecution; or
- (c) the applicant cannot afford to pay for medical reports, and the appeal is about the health of the applicant or of someone for whom the applicant has parental responsibility; or
- (d) the applicant, because of a disability or disadvantage, cannot adequately prepare or present the case without legal assistance; or
- (e) the appeal raises important or complex questions of law.

### **Guideline 3 Migration cases**

#### **3.1 Assistance for limited migration matters**

- (1) Legal assistance may be granted for proceedings in the Federal Court or High Court dealing with a migration matter, including a refugee matter, only if:
  - (a) there are differences of judicial opinion which have 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, not including a challenge to a decision about a visa or a deportation order.
- (2) Subclause (1) applies to a matter, even if the matter could also be characterised as falling within another Commonwealth priority or guideline.
- (3) In all other cases applicants should be referred to the Immigration Advice and Application Assistance Scheme (IAAAS) for possible assistance.

### **Guideline 4 Equal opportunity and discrimination cases**

#### **4.1 Assistance for certain matters if substantial benefit**

Legal assistance may be granted for equal opportunity or discrimination cases if there are strong prospects of substantial benefit being gained by the applicant and also by the public or a section of the public.

### **Guideline 5 War Veterans' matters**

#### **5.1 Purpose**

- (1) To acknowledge the special contribution made by war veterans to protecting Australian society in time of war, assistance may be granted to war veterans or their dependants in relation to 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*.
- (2) Assistance is not subject to the means test, nor any contribution except costs recovered in the matter.

#### **5.2 Non-complex matters – stage of matter limits**

- (1) Unless the Commission determines the matter to be complex, funding may be granted in the following stages:
  - stage 1*— funding for the following costs and disbursements only:
    - (a) a maximum of 10 hours for work up to and including the second preliminary conference (including all attempts to settle the matter); and
    - (b) up to 2 medical reports, if necessary.
  - stage 2*— funding for the following costs and disbursements only:

- (a) a maximum of 12 hours work for the hearing (including all preparation and either the costs of a solicitor or the fees of a barrister for appearing at the hearing); and
  - (b) witness expenses.
- (2) The total amount of funding that may be made available for disbursements for a non-complex matter is \$2,500.
- (3) Funding at each stage is subject to:
- (a) merits assessment; and
  - (b) compliance with the Commonwealth's Checklist for Administration of War Veterans' Matters and the Administrative Appeal Tribunal's General Practice Direction.

### **5.3 Complex Matters**

- (1) The Commission may determine the most appropriate assistance to provide for complex matters.
- (2) The Commission may determine that a matter is complex at any time during the administration of a matter.
- (3) In determining whether a matter is complex, the Commission may have regard to:
- (a) whether several conditions are being claimed, and reports are required from 3 or more areas of medical expertise;
  - (b) whether there is a complex link between Statements of Principle and the condition claimed; and
  - (c) whether unresolved issues of law are involved.
- (4) In making its determination, the Commission may consult with:
- (a) the applicant for assistance;
  - (b) the national office of the Department of Veterans' Affairs; and
  - (c) the Administrative Appeals Tribunal.

## **Guideline 6 Other Federal and High Court proceedings**

### **6.1 Assistance for certain matters if substantial benefit**

Subject to the other civil law guidelines, if the Commission considers that there are strong prospects that the applicant would gain a substantial benefit, legal assistance may be granted for:

- (a) appeals from decisions of the Administrative Appeals Tribunal;
- (b) original proceedings in the Federal Court, the Federal Magistrates Service and the High Court; and
- (c) appeals in the Full Court of the Federal Court and the High Court.

## SCHEDULE 4 PERFORMANCE INFORMATION

### 1. Purpose of this Schedule

1.1 Subject to the considerations set out in clause 4.1 below, this Schedule sets out the performance information requirements of the Commonwealth pursuant to clause 5.3 of the Agreement.

1.2 Funding for individual Legal Aid Commissions is appropriated by the Commonwealth for the Commonwealth Legal Aid Program ('the Program'). Arrangements to facilitate the operation of the Program are contained in the Commonwealth Legal Aid Agreement to which this Schedule is affixed ('the Agreement'). Attachment A sets out the outcomes/outputs hierarchy for the Program.

1.3 The Commonwealth requires performance information to facilitate planning, policy development and performance management in relation to the Program. This Schedule sets out the Commonwealth's requirements for performance information. The Commonwealth will regularly assess the continued appropriateness of its performance information requirements and, accordingly, this Schedule will be subject to review and amendment as agreed between the parties in accordance with clause 5.8 of the Agreement.

1.4 The performance information required by the Commonwealth comprises information/data on:

- progress in meeting the targets specified in Schedule 1;
- implementation of the priorities and guidelines set out in Schedules 2 and 3;
- the types and location of clients accessing services;
- the numbers and types of matters for which assistance is sought;
- the numbers, nature, extent and costs of services provided to clients;
- the numbers of people who are refused assistance and the reasons why assistance is refused;
- the costs associated with giving effect to this Agreement;
- expenditure against budget; and
- the financial viability of the Commission.

1.5 Ongoing funding under the Program is subject to each of the Commissions meeting the Commonwealth's performance improvement requirements, as set out in the Attorney-General's portfolio budget statement. The Commonwealth will assess each Commission's performance in terms of effectiveness (the extent to which outcomes have been achieved), efficiency (the outputs produced for the quantum of funds provided) and service quality. Monitoring of performance will be undertaken on an ongoing basis through the examination of information and data provided by the Commission in accordance with the Agreement and its Schedules. Evaluation of specific types of outputs/services will be undertaken on a periodic basis as agreed between the Commonwealth and the Commission.

1.6 In relation to performance improvement, the Commonwealth has identified the following areas in which it will be seeking to enhance service delivery:

- equity and access to services – performance measures will include the percentage of the total population, and specific groups including those in rural and remote areas, receiving services;
- early intervention strategies – performance measures will include the amount of PDR work undertaken by the Commission. An evaluation of the effectiveness of the Commission's PDR services in delivering quality and durable outcomes may also be undertaken;
- quality of service – performance measures will include adherence to practice standards and the timeliness of service delivery; and
- cost efficiency – performance measures will include the level of administration costs as a percentage of actual service delivery costs.

1.7 These issues will be addressed in the regular meetings provided for in clause 5.4 of the Agreement.

## **2. Financial Reporting**

2.1 As provided in Schedule 1, the Commission will submit to the Commonwealth for approval prior to each financial year, a revised list of prices set by the Commission for each of the outputs at Attachment A. This should be provided for discussion prior to the meetings referred to in clause 12 of this Schedule. Detailed working documents should be provided, to demonstrate the methodology by which overheads are calculated and attributed.

2.2 In the format provided at Attachment B, the Commission will prepare a report at the end of each quarter of each financial year, and an annual report, which details the Commission's performance in achieving the outputs required under this agreement.

2.3 The Commission will prepare a quarterly report in accordance with clause 12.4 of Schedule 3 (Family Law Guidelines), in relation to cases in which the actual costs and commitment exceed the amounts in paragraph 11.1 (4) or clause 12.2 of that Schedule.

## **3. Performance Reporting**

3.1 The performance and financial information provided by the Commission in accordance with this Schedule will be used to generate reports for discussion at the meetings referred to in clause 12.

3.2 The Commonwealth will ensure any reports generated for discussion in accordance with sub clause 3.1 are provided to the Commission in advance of the meetings referred to in clause 12.

## **4. Data Collection**

4.1 In order to facilitate management of the Program in a cohesive and consistent manner, the data underpinning the Commonwealth's performance information requirements must be collected on a common basis by all Commissions. National consistency in relation to data concepts and definitions, collection, processing, and presentation are critical. The Commonwealth wishes to continue to work with all Commissions to improve the consistency and efficiency of data collection. Subject to this consideration, the following clauses set out the detail of the Commonwealth's requirements for performance information.

## **5. Provision of Data to the Commonwealth**

5.1 The Commonwealth presently operates and maintains the Legal Aid System Statistical Information Exchange (LASSIE) which contains data relating to the operation of all Legal Aid Commissions. The Commonwealth intends that the data items specified in Attachment C to this Schedule be stored on the LASSIE system to facilitate analysis and reporting of that data. However, in accordance with the Commonwealth's policies on competitive tendering and contracting, the Commonwealth intends to undertake a competitive tendering process in relation to the ongoing operation of the LASSIE system.

5.2 Pending the conclusion of satisfactory arrangements for outsourcing the operation of the LASSIE system, the Commission agrees to provide a data extract from its LA Office system to the Commonwealth on a monthly basis. The Commission shall therefore prepare a data extract from its LA Office system containing the data required by this Schedule, to be provided to the Commonwealth in respect of a month, in accordance with the format set out at Attachment D and as may be varied from time to time in accordance with clause 5.8 of the Agreement. Both parties to this Agreement acknowledge that effective and efficient data processing is important to ensure that the data has been validated and is free of errors.

5.3 The Commission shall prepare the extract not earlier than the 14th day of the next month and send that extract so as to reach the Commonwealth not later than the 20th day of that same month, or such later day of that month as the Commonwealth may in a particular case arrange beforehand with the Commission.



5.4 Unless otherwise agreed with the Commonwealth, failure to provide the Commonwealth with completed data for a particular month by the end of the respective quarter may result in suspension of the Commonwealth's next quarterly payment to the Commission. The Commission must advise the Commonwealth of any circumstance which may affect the provision of data in accordance with this timeframe no later than the end of the month in which provision of the data is required.

## **6. Obligations in respect of the Data Collection System**

6.1 The Commission shall not vary the Data Codes set out in Attachment E without prior consultation with, and the written agreement of, the Commonwealth.

6.2 The Commission shall not vary its LA Office System in any way, in particular by hardware or software changes, that would alter the definition or specification of the Commonwealth Performance Data set out in this Schedule and its various Attachments, without prior consultation with, and the prior written agreement of, the Commonwealth.

## **7. Encryption**

7.1 Each client number, application number, advice record number, duty record number and assigned practitioner number, as set out in Attachment C, is to be encrypted in accordance with the specification at Attachment F.

7.2 The key or keys relating to the method of encryption are those currently entered into the encryption programs and are not to be varied under any circumstance whatsoever.

## **8. Certification of Performance Information**

8.1 The Commonwealth will require a written certification from the Commission in accordance with clause 6.4 of the Agreement, that the performance information provided by the Commission is in accordance with the requirements set out in this Schedule, and demonstrates that they have delivered outputs in accordance with the Agreement.

## **9. Data Items**

9.1 The Commonwealth's requirements for performance information purposes are contained in a detailed technical specification at Attachments C, D and E. The attachments set out the complete listing of data items required, their definitions, field names and format, and applicable codes.

## **10. Additional Data Items**

10.1 A process is to be agreed between the Commonwealth and National Legal Aid for the refinement and further development of the Legal Assistance Needs Model. It is envisaged that some additional data items will be identified by that process. Following the conclusion of that identification process, additional data items will be added in accordance with clause 5.8 of the Agreement.

## **11. The National Legal Aid Data Collection**

11.1 The Commonwealth and the Commission each see value in the availability of data at a national level on the delivery of legal aid services by all Legal Aid Commissions. Accordingly, in addition to data collected for performance information purposes, the Commonwealth agrees to provide a national repository for data relating to all services provided by Commissions. That repository is presently contained within the Commonwealth's LASSIE system, the operation of which, as indicated in paragraph 3.1 above, is to be subject to a competitive tendering process.

11.2 The Commission agrees to provide the data items specified at Attachment G for inclusion in the national repository. In order to ensure the integrity, currency and accuracy of this data the Commission agrees to adhere to the requirements set out at paragraphs 2 to 5 above in relation to the collection and provision of the data.

11.3 The Commonwealth agrees to provide the Commission with access to the LASSIE system for reporting purposes.

## **12. Regular Performance Information / Financial Meetings**

12.1 As provided at clause 5.4 of the Agreement, the Commonwealth and the Commission will meet at least three times per year, to discuss pricing of outputs, performance information and financial information. Meetings should take place following the annual audit (approximately early December); mid-year (approximately February); and at the end of May, to discuss the next financial year.

12.2 Meetings may take place by telephone or video conference. At least one meeting per year should take place face to face, with the parties travelling to meetings on an alternate basis. The cost of these meetings comprise part of the strategic services fee provided for at clause 1.2 of Schedule 1.

12.3 Items for discussion will include:

- equity and access to services
- early intervention strategies
- quality of service
- cost efficiency
- performance targets

12.4 The following matters will be included for discussion at Post-Audit Meetings:

- price/cost of in-house practice
- comparison of price/cost of in-house and referred matters
- stages of matter
- performance review - against guidelines and priorities
- expensive/complex cases
- cost of strategic services
- income and expenditure reports

12.5 Items for discussion at February and May Meetings will include:

- (May) review of output prices
- (May) settlement of prices and draft performance targets for coming year
- income and expenditure report, year to date
- performance information, year to date
- performance information and financial information against each output
- comparison - performance information against same quarter of previous year (to assist in planning for targets for following year)

## **13. Attachments:**

- A Outputs Flowchart
- B Financial Reporting Format
- C Data Items
- D Technical Specifications
- E Codes
- F Encryption Specification
- G Data Items for the National Legal Aid Data Collection

**ATTACHMENT A**  
**OUTPUTS FLOWCHART**