

# **Legal Aid Guidelines**

## **FAMILY LAW COUNCIL**

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**The Hon Daryl Williams AM QC MP**  
**Attorney-General**  
**Parliament House**  
**CANBERRA ACT 2600**

Dear Attorney-General,

Your Department recently forwarded to Council the Commonwealth's Legal Aid Guidelines, which are currently being reviewed, and asked for Council's advice on the guidelines.

Council has had the opportunity of discussing this matter with Mr Stephen Bourke at its meeting on 19-20 February 1998 and Mr Bourke will no doubt be taking Council's comments into consideration. Discussions were also held with Ms Judith Ryan, the Manager of Family Law in the NSW Legal Aid Commission.

The main matters discussed with Mr Bourke on the Family Law segment of the Guidelines are summarised below for your information.

### **Guideline 1 - Child Representation**

Under this guideline parties who are not receiving legal assistance must pay the cost of child representation unless they can demonstrate that they are unable to afford them. Council noted that there are no guidelines on how this discretion will operate.

Legal practitioners on Council expressed concern that a culture is already developing under which, unless the parties are extremely wealthy, children are not being represented in circumstances where such representation is highly desirable. Some parents are arguing successfully that they should not have to pay "double costs" where they have no say in who the child's representative is to be.

Council noted also that the presence of a child's representative usually assisted the parties to reach an early settlement and thereby saved costs overall. Unfortunately it is difficult to obtain statistics from the court to quantify the savings involved.

### **Guidelines 2 - 7**

Council has no significant comments on these guidelines.

### **Guideline 8 - Property Proceedings**

Council is of the view that the guidelines need to be flexible enough to take into account regional variations in relation to property values. In NSW, for example, whereas an amount of \$20,000 means test limit on matrimonial property in rural areas, such an amount is unreasonable in relation to Sydney.

### **Guidelines 9 - 11**

Council has no significant comments on these guidelines.

### **Cost caps (Family Law)**

There were a range of views on Council in relation to the use of cost caps and these matters have no doubt been fully explored with the Legal Aid Commissions.

Council points out that there are no guidelines dealing specifically with Appeals. Cost caps on appeals should allow for caps to be exceeded where the merits of the appeal warrant such a course.

I will arrange for a copy of this advice to be sent to Legal Aid and Family Services.

Yours sincerely,

**(Jennifer Boland)**  
**Chairperson**