



# THE COMMONWEALTH GUIDELINES FOR LEGAL FINANCIAL ASSISTANCE 2012

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## **PART 1—PRELIMINARY**

### **1.1 Citation**

These guidelines are the Commonwealth Guidelines for Legal Financial Assistance 2012.

### **1.2 When do these guidelines start?**

These guidelines start on 1 July 2012.

### **1.3 Background**

In the 2011/2012 budget, in line with the Access To Justice principles, government decided to increase the reach of financial assistance to more Australians in need by moving to a focus on assistance for disbursements, with legal representation costs available in exceptional circumstances. This policy also aims to support the work of pro bono lawyers. The policy shift was accompanied by a reduction in funding.

### **1.4 Purpose**

- (1) These guidelines deal with making grants of financial assistance to parties to particular legal actions. There are 2 kinds of schemes:
  - (a) statutory, or legislative, schemes (that is, a scheme established by or under legislation); and
  - (b) non-statutory (or executive) schemes (that is, a scheme established in reliance on the executive power of the Government, rather than power conferred by legislation).
- (2) These guidelines cover schemes of both kinds as set out in subsection (1).

### **1.5 Scope**

- (1) Grants under schemes covered by these guidelines are made at the discretion of the Attorney-General.

Note: Part 7 contains detail about the financial assistance available under each scheme.

- (2) Grants under schemes covered by these guidelines may only be made where the proposed expenditure falls within the scope of Commonwealth constitutional spending power.
- (3) Assistance is generally targeted at helping people meet the sometimes prohibitive costs of disbursements. Targeting assistance in this way ensures that the limited funding available is administered efficiently, effectively and ethically. It will also ensure that the limited grant funds available in any given year are shared equitably and given to those cases that will assist the community to the greatest extent.

- (4) Targeting assistance in this way also aligns with the Access to Justice Strategic Framework (available on the website for the Attorney-General's Department) by removing the barrier to commencing legal action that such potentially high costs can present.
- (5) In some cases, financial assistance may be available for other costs (for example, legal representation costs), as well as disbursements.
- (6) The Attorney-General may only authorise payment of financial assistance under s66(3) of the *Freedom of Information Act 1982* in respect of activities for which the Attorney-General is the responsible Minister, or where the Attorney-General is authorised to do so on behalf of another Minister.
- (7) Nothing in these guidelines affects or takes away the discretion of the Attorney-General to make a grant in any circumstances that the Attorney-General considers appropriate.

## **1.6 Overview of process for getting grants**

- (1) Grants are made on written application. Part 4 sets out the application process.
- (2) The Attorney-General delegates powers and authorises persons to exercise powers, as appropriate, in relation to grants to officers in the Attorney-General's Department.
- (3) Applicants are required to submit detailed information to enable the Department to deal with the application. Applicants have other responsibilities under these guidelines and under a grant offer.
- (4) Decisions to make grants are made with regard to:
  - (a) the scope of the schemes covered by these guidelines (see section 1.5); and
  - (b) the purpose of the scheme (see section 5.4); and
  - (c) the special considerations (that is, considerations peculiar to the scheme to which a decision maker must have regard) (see Division 2 of Part 5); and
  - (d) whether it is reasonable in all the circumstances to make the grant (see Division 3 of Part 5); and
  - (e) the total funds available for all grants under the legal financial assistance appropriation in the relevant financial year.
- (5) An applicant who gets a grant is called a grant recipient. Grant recipients have continuing responsibilities throughout the grant period. Parties to grant agreements have responsibilities too.
- (6) If a grant recipient gets a grant for financial assistance, and a legal practitioner represents the grant recipient, the legal practitioner will generally invoice the Department directly for work that the legal practitioner does.

- (7) In most other cases, grant recipients will generally pay for disbursements and seek reimbursement from the Department during the grant period (or shortly after it ends).

## PART 2—INTERPRETATION

### 2.1 Definitions

In these guidelines:

**agency** has the same meaning as in the *Public Service Act 1999*.

**applicant** means an entity that applies for a grant under section 4.2 or on whose behalf an application under that section is made.

**Attorney-General** means the Attorney-General of the Commonwealth.

**Australian legal action** means:

- (a) Australian legal proceedings; or
- (b) a process (other than Australian legal proceedings) to resolve a dispute in Australia.

**Australian legal proceedings** means legal proceedings involving questions arising under Commonwealth law in a court in Australia.

**benefit** includes any advantage and is not limited to property or money.

**court** includes:

- (a) any court or tribunal established by or under law; and
- (b) any other body established by or under law that has the power to take evidence from witnesses before it on oath or affirmation (including a Commission, Royal Commission or other special commission of inquiry).

**decision maker** means the officer in the Department authorised by the Attorney-General to decide applications for grants.

**detriment** includes any disadvantage and is not limited to personal injury or to loss of or damage to property.

Note: An example of a detriment is deportation from Australia.

**entity** means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a body politic;
- (d) an incorporated body;
- (e) an unincorporated body;

- (f) another body or group not covered by paragraphs (a) to (e) that is formed for a common purpose, for example a consumer group.

**legal action** means:

- (a) Australian legal action; or  
 (b) overseas legal action.

**legal aid commission** means the legal aid commissions in each Australian State and Territory.

**legal practitioner** means a legal practitioner (however described) of the High Court or the Supreme Court of an Australian State or Territory or an appropriately qualified and/or recognised legal practitioner in an overseas jurisdiction.

**offence** includes an offence against a law of another country.

**overseas legal action** means:

- (a) overseas legal proceedings; or  
 (b) a process (other than overseas legal proceedings) to resolve a dispute in a country (or a part of a country) other than Australia.

**overseas legal proceedings** means legal proceedings commenced in a court outside Australia (whether or not the proceedings involve a question under Commonwealth law).

**scheme** means a scheme covered by these guidelines under which an entity may get a grant.

**the Department** means the Commonwealth Attorney-General's Department.

## 2.2 Definitions throughout the guidelines

A number of words and phrases are not defined in section 2.1, but are instead defined in the provisions to which the word or phrase relates. The word or phrase has the same meaning throughout these guidelines. The following table sets out these words and phrases.

	<b>Word or phrase</b>	<b>Where is it defined?</b>
1	accepted by the Department as a complete application	section 4.4
2	applicant considerations	subsection 5.8(1)
3	Assets	section 5.12
4	complete application	section 4.3



5	Disbursements	section 7.3
6	Expenses	section 5.14
7	financial assistance	section 7.2
8	financially-associated entity	section 5.9
9	financial circumstances	subsection 5.8(2)
10	financial considerations	section 5.16
11	grant agreement	section 6.3
12	grant agreement party	subsections 6.3(2) and 6.5(5)
13	grant amount	paragraph 6.2(1)(a)
14	grant recipient	subsection 6.3(5)
15	Income	section 5.11
16	legal action considerations	section 5.15
17	legal representation costs	section 7.4
18	Liabilities	section 5.13
19	reasonable in the circumstances	section 5.7
20	retrospective costs	section 6.7
21	reviewable decision	subsection 9.2(1)
22	special considerations	section 5.6

### 2.3 Principles of interpretation

(1) If:

- (a) a word or phrase is used in these guidelines; and
- (b) the word or phrase is not defined in these guidelines; and
- (c) the word or phrase is defined in the *Acts Interpretation Act 1901*;

then, the word or phrase has the same meaning in these guidelines as it does in the *Acts Interpretation Act 1901* and a reference in that Act to “an Act” (or a similar expression) is taken to be a reference to “these guidelines”.

Note: Examples are *month* and *writing*.

- (2) If a word or phrase is given a particular meaning under section 2.1, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (3) A word used in singular number includes the plural and words used in the plural number include the singular.

#### **2.4 References to amounts of money**

- (1) A reference in these guidelines to an amount of money expressed in dollars is a reference to that amount:
  - (a) in Australian dollars; and
  - (b) inclusive of any goods and services tax payable on the amount under the *A New Tax System (Goods and Services Tax) Act 1999*.
- (2) Financial assistance under these guidelines will be paid in Australian dollars at the currency conversion rate applicable at the time that the financial assistance is paid.

## **PART 3—SCHEMES TO WHICH THESE GUIDELINES APPLY**

### **Division 1—Schemes to which these guidelines apply**

#### **3.1 Which schemes are covered by these guidelines?**

(1) These guidelines cover the following schemes:

(a) the following statutory schemes:

- (i) section 30 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*;
- (ii) sections 54C and 74A of the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- (iii) sections 30A and 69 of the *Administrative Appeals Tribunal Act 1975*;
- (iv) section 27 of the *Australian Crime Commission Act 2002*;
- (v) section 46PU of the *Australian Human Rights Commission Act 1986*;
- (vi) section 170 of the *Competition and Consumer Act 2010*;
- (vii) subregulations 11(4) and (5) of the *Defence Force Discipline Appeals Regulation 1957*;
- (viii) subsections 324(1), 326(1), 326(4) and 326(5) of the *Fair Work (Registered Organisations) Act 2009*;
- (ix) section 66 of the *Freedom of Information Act 1982*;
- (x) subsections 69(3) and 78B(4) of the *Judiciary Act 1903*;
- (xi) subsection 6(7) of the *Jurisdiction of Courts (Cross-Vesting) Act 1987*;
- (xii) sections 103 and 221 of the *Law Enforcement Integrity Commissioner Act 2006*;
- (xiii) section 63 of the *Privacy Act 1988*;
- (xiv) section 102 of the *Proceeds of Crime Act 1987*;
- (xv) section 19 of the *War Crimes Act 1945*; and

(b) the following non-statutory schemes:

- (i) serious overseas criminal matters;
- (ii) overseas child abduction;

- (iii) commonwealth public interest and test cases;
- (iv) royal commissions and inquiries (this does not include the *Royal Commission into Institutional Responses to Child Sexual Abuse*);
- (v) special circumstances;
- (vi) disbursement support.

### **3.2 Which schemes are not covered by these guidelines?**

The following schemes are not covered by these guidelines, but are dealt with in separate guidelines:

- (a) payments for Costs Certificates issued by the Courts pursuant to the *Federal Proceedings (Costs) Act 1981*;
- (b) financial assistance available for respondents under the *Native Title Act 1993*.
- (c) financial assistance for persons subject to a warrant for question or detention issued under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*.

### **3.3 Replacement of pre-existing guidelines**

The guidelines replace the following guidelines:

- (a) Guidelines for the provision of legal or financial assistance by the Commonwealth;
- (b) Commonwealth Public Interest and Test Cases Scheme Guidelines and Conditions;
- (c) Guidelines Special Circumstances (Overseas) Scheme;
- (d) Guidelines Special Circumstances Scheme;
- (e) Guidelines for financial assistance for legal costs before Royal Commissions and Inquiries.

### **3.4 Discretion of Attorney-General in relation to establishment of schemes not affected**

Nothing in this Part affects, or takes away, the discretion of the Attorney-General to establish, change or end a non-statutory scheme.

## Division 2—Establishment of non-statutory schemes

### 3.5 Establishment

The following schemes are established:

- (a) the serious overseas criminal matters scheme;
- (b) the overseas child abduction scheme;
- (c) the commonwealth public interest and test cases scheme;
- (d) the royal commissions and inquiries scheme;
- (e) the special circumstances scheme;
- (f) the disbursement support scheme.

Note: The royal commission and inquiries scheme does not concern the Royal Commission into Institutional Responses to Child Sexual Abuse. The *Commonwealth Guidelines for Legal Financial Assistance for Witnesses to the Royal Commission into Institutional Responses to Child Sexual Abuse 2013* cover financial assistance for this Royal Commission.

### 3.6 The serious overseas criminal matters scheme

The purpose of this scheme is to provide financial assistance for an individual facing an overseas criminal legal action if:

- (a) the individual is being, or will be, prosecuted for a criminal offence for which the individual may be punished by:
  - (i) a term of imprisonment equal to or longer than 20 years; or
  - (ii) the death penalty; and
- (b) the individual has a continuing connection with Australia.

Note: **Overseas legal action** is defined in section 2.1.

### 3.7 The overseas child abduction scheme

The purpose of this scheme is to provide financial assistance for an individual if:

- (a) a child under 16 years of age who is habitually resident in Australia immediately before the removal to or retention in another country by another individual; and
- (b) the removal or retention is wrongful because:
  - (i) it is in breach of rights of custody attributed to the first-mentioned individual (whether alone or with an institution or other body) under Australian law; and

- (ii) at the time of the removal or retention those rights were actually exercised (either jointly or alone) or would have been so exercised but for the removal or retention; and
- (c) the individual has requested, or will request legal or judicial cooperation from an appropriate authority for overseas legal action in the other country to (whether under the Hague Convention on the Civil Aspects of International Child Abduction or otherwise):
  - (i) secure the return of the child; or
  - (ii) ensure that rights of custody and access are effectively respected in the other country.

### **3.8 The Commonwealth public interest and test cases scheme**

The purpose of this scheme is to provide financial assistance for entities that are parties to legal action if a decision in the action, in the opinion of the Attorney-General will:

- (a) settle an uncertain area or question of Commonwealth law; or
- (b) resolve an important question arising under a Commonwealth law that affects the rights of a section of the public which is, or a group of individuals who are, socially or economically disadvantaged.

### **3.9 The royal commissions and inquiries scheme**

The purpose of this scheme is to provide financial assistance for an entity if the entity's testimony will assist a commission or inquiry (other than the *Royal Commission into Institutional Responses to Child Sexual Abuse*).

### **3.10 The special circumstances scheme**

- (1) The purpose of this scheme is to provide financial assistance for an entity involved in legal action in special circumstances.
- (2) Special circumstances include, but are not limited to, the following:
  - (a) the entity could seek financial assistance under a statutory scheme, but the application of the legislation establishing the statutory scheme to the entity produces a result that is unintended, anomalous, inequitable or otherwise unacceptable in the particular circumstances;
  - (b) legislation is proposed to deal with the circumstances of the entity, but it is appropriate to make a grant to the entity before the legislation is in force;
  - (c) no scheme provides for financial assistance to the entity but the Attorney-General considers that there is a moral obligation on the Commonwealth to make a grant;
  - (d) the following circumstances apply:

- (i) an individual receives a notice from the Secretary of the Department under subsection 39A(1) of the *National Security Information (Criminal and Civil Proceedings) Act 2004*; and
- (ii) the individual is not legally represented in the civil proceedings (as defined in that Act) to which the notice relates; and
- (iii) the individual has applied for a security clearance by the Department; and
- (iv) the Department has decided not to grant a security clearance to the individual, or not to give a security clearance to the individual at the level considered appropriate by the Secretary of the Department, in relation to the information to which the notice relates.

### **3.11 The disbursement support scheme**

The purpose of this scheme is to provide financial assistance to an entity that is a party to non-criminal Australian legal proceedings if:

- (a) the entity is not, or would not be, qualified to:
  - (i) get a grant under any other scheme to which these guidelines apply; or
  - (iii) get financial assistance for respondents under the *Native Title Act 1993*; or
  - (iv) get financial assistance for persons subject to a warrant for question or detention issued under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; or
  - (v) get financial assistance from a legal aid commission; and
- (b) the disbursements sought for the Australian legal proceedings are equal to or greater than a total of \$500.00.

## PART 4 – APPLICATION PROCESS

### 4.1 Who can get a grant?

- (1) If the grant is for an **Australian legal action**, an entity may get a grant under a scheme if:
  - (a) the entity is, or intends to be, a party to an Australian legal action;
  - (b) if the scheme is a statutory scheme – the entity meets any other qualification for getting a grant that is specified in the legislation establishing the scheme; and
  - (c) the entity is not getting, or would not get, financial assistance from a legal aid commission.
- (2) If the grant is for an overseas legal action, an entity may get a grant under a scheme if:
  - (a) one of the following applies:
    - (i) if the scheme is the serious overseas criminal matters scheme - an individual is, or will be, involved in overseas legal proceedings to prosecute an individual for an offence; and
    - (ii) if the scheme is the overseas child abduction scheme - an individual has started, or will start, overseas legal action; and
    - (iii) if the scheme is the special circumstances scheme - an entity is, or intends to be a party to an overseas legal action; and
  - (b) legal representation costs would not generally be funded where an entity is getting or would get, legal financial assistance from an overseas jurisdiction.

### 4.2 Application for grant

- (1) An application for a grant under a scheme may be made by, or on behalf of, an entity that may get the grant under the scheme.
- (2) The application must be complete.
- (3) The Department may refuse to consider an application that is not complete.

### 4.3 What is a complete application?

A **complete application** is an application that is:

- (a) that is made in writing by completing the appropriate form provided by the Department; and
- (b) submitted to the Department electronically (including online lodgement when available), or by mail, or fax to:



Assistant Secretary  
Legal Assistance Branch  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600  
Fax: (02) 6141 4926  
Email: [finass@ag.gov.au](mailto:finass@ag.gov.au); and

- (c) accepted by the Department as a complete application.

Note: Forms are available on the website for the Attorney-General's Department at [www.ag.gov.au](http://www.ag.gov.au).

#### 4.4 What does accepted by the Department as a complete application mean?

An application is ***accepted by the Department as a complete application*** if:

- (a) all information required by the Department is contained in, or attached to, the application; or
- (b) not all the information required by the Department is contained in, or attached, to the application, but:
- (i) the applicant provides the information in response to a request from the Department under section 4.5, or on the applicant's own initiative; or
- (ii) the Department tells the applicant in writing that the applicant is not required to provide particular information.

Note: This may affect when the grant period starts (see section 6.8).

#### 4.5 Request for further information

- (1) The Department may, by notice in writing, ask an applicant to provide any information, within the period specified, that the Department reasonably requires to enable a decision maker to decide the application.
- (2) If the information is not provided within that period then the decision maker may refuse the application without any further consideration.

#### 4.6 Consent to obtaining further information

By applying, the applicant consents to the Department obtaining information about the application from:

- (a) an agency;
- (b) an organisation that provides legal aid;
- (c) an overseas authority;
- (d) the applicant's legal practitioner;

for the purpose of performing functions relating to the provision of legal financial assistance under these guidelines.

#### **4.7 Responsibilities of applicants**

- (1) Applicants have the following responsibilities:
  - (a) to give honest and accurate information that is not misleading in the application, and to the Department when required;
  - (b) to tell the Department if the circumstances of the applicant change before the Department makes a decision and the change may affect the application; and
  - (c) to make any contributions that the applicant agrees to make under section 6.9.
- (2) The Department may refuse to consider an application if:
  - (a) it contains dishonest, inaccurate or misleading information; or
  - (b) the circumstances of the applicant change in a way that may affect the application and the applicant does not tell the Department.
- (3) Commonwealth law includes offences with penalties of up to 10 years' imprisonment for persons who do any of the following:
  - (a) make false or misleading statements or provide false or misleading information (including omitting information);
  - (b) obtain property or financial advantage by deception;
  - (c) do something dishonestly to obtain a gain or a financial advantage;
  - (d) influence a commonwealth official;
  - (e) use forged documents.

#### **4.8 Discretion of Attorney-General in relation to processing applications not affected**

Nothing in this Part affects, or takes away, the discretion of the Attorney-General to add to, take away or change the processes for applying for grants.

## **PART 5—decisions on applications**

### **Division 1—General Principles**

#### **5.1 Making a decision on an application**

- (1) The Department must cause a decision maker to make a decision on a complete application.
- (2) In deciding whether to make a grant under a scheme, a decision maker must have regard to:
  - (a) the scope of the schemes covered by these guidelines (see section 1.5); and
  - (b) the purpose of the scheme; and
  - (c) the special considerations; and
  - (d) whether it is reasonable in all the circumstances to make the grant; and
  - (e) the total funds available for all grants under the legal financial assistance appropriation in the relevant financial year.
- (3) The decision maker may decide the weight that should be given to each matter relevant to the circumstances of the case.
- (4) If the decision maker has all the information needed to decide an application, the decision maker must decide the application within 28 days of the receipt of the complete application by the Department.

Note: Sometimes even if an application is complete, the Department will seek further information.

#### **5.2 Notice of decision**

- (1) The decision maker must, within 28 days of receiving a complete application, tell the applicant, or the entity that applied on behalf of the applicant, of the decision maker's decision in writing.
- (2) The notice must:
  - (a) if the decision maker decides to make the grant - make a grant offer under section 6.1;
  - (b) give reasons for the decision maker's decision; and
  - (c) include information about review of the decision under Part 9.
- (3) The applicant may also be able to obtain reasons for a decision under the *Administrative Decisions (Judicial Review) Act 1997*.

Note: Grant offers are dealt with under Part 6.

### **5.3 How do these guidelines apply to groups?**

- (1) If the applicant is a member of a group covered by paragraph (f) of the definition of **entity** in section 2.1, the decision maker may only apply these guidelines where the relevant scheme permits an application for assistance to be made by or on behalf of a group of persons.
- (2) If the applicant is a member of a group covered by paragraph (f) of the definition of **entity** in section 2.1, the decision maker may apply these guidelines with any adjustments that are reasonably necessary to:
  - (a) satisfy the decision maker that making the grant is reasonable in all the circumstances; and
  - (b) to make a grant offer and enter into a grant agreement; and
  - (c) to administer the grant.
- (3) The decision maker may do this by applying a provision of these guidelines to:
  - (a) the group as a whole; or
  - (b) the members of the group whose interests would be directly affected if the grant were made.

### **5.4 How does a decision maker decide what the purpose of the scheme is?**

The purpose of a scheme is:

- (a) if the scheme is a statutory scheme—the purpose or object of the legislation establishing the scheme; and
- (b) if the scheme is a non-statutory scheme—the purpose of the scheme set out in Part 3, Division 2.

### **5.5 Discretion of Attorney-General in relation to deciding applications for grants not affected**

Nothing in this Part affects, or takes away, the discretion of the Attorney-General to add to, take away, or change, the matters to which a decision-maker may have regard for the purposes of deciding applications for grants.

## Division 2—What are the *special considerations*?

### 5.6 What are the special considerations?

(1) The special considerations are considerations that relate to a particular scheme.

(2) The following table sets out the special considerations.

	<i>If the scheme is...</i>	<i>then the decision maker must have regard to...</i>
1	any statutory scheme	any matter stated in the legislation establishing the statutory scheme to which the decision maker must have regard.
2	any non-statutory scheme	(1) the schemes purpose in Division 2 of these guidelines (2) whether the applicant is a citizen or resident of Australia, or otherwise has a connection with Australia.
3	section 69 of the <i>Administrative Appeals Tribunal Act 1976</i>	whether the Australian legal proceedings involve the deportation of the applicant.
4	section 170 of the <i>Competition and Consumer Act 2010</i>	whether there is likely to be substantial benefit to the public or a significant section of the public as a result of the Australian legal proceedings.
5	the overseas child abduction scheme	whether fulfilling Australia's commitment to the principles of the Hague Convention on the Civil Aspects of International Child Abduction outweighs an absence of public interest (if any) in the proceeding.
6	the royal commissions and inquiries scheme (other than the <i>Royal Commission into Institutional Responses to Child Sexual Abuse</i> ).	(1) whether the applicant's personal interests could be prejudiced by giving testimony (2) whether the applicant is a central figure in the proceeding and therefore is likely to be involved to a major degree in those proceedings (3) any specific guidelines established for a particular inquiry under this scheme.

### **Division 3—What does *reasonable in the circumstances* mean?**

#### **5.7 How does a decision maker decide what is reasonable in the *circumstances*?**

- (1) In determining whether it is reasonable in the circumstances to make the grant, the decision maker may have regard to any matter relevant to the circumstances of the case including, but not limited to, the following:
  - (a) the applicant considerations;
  - (b) the financial considerations;
  - (c) the legal action considerations;

#### ***Subdivision A – What are the applicant considerations?***

#### **5.8 What are the applicant considerations?**

- (1) The ***applicant considerations*** are:
  - (a) an assessment of whether the applicant has the means to meet the cost of the legal action without incurring serious financial difficulty having regard to the financial circumstances of the applicant; and
  - (b) the nature and extent of the benefit or detriment that may accrue to the applicant, or to another entity, as a result of the legal action.
- (2) The ***financial circumstances*** of the applicant include, but are not limited to:
  - (a) the applicant's income; and
  - (b) the applicant's assets (including whether the applicant is able to sell assets, or to secure a loan against the assets); and
  - (c) the applicant's liabilities; and
  - (d) the applicant's expenses; and
  - (e) the applicant's style or standard of living; and
  - (f) the income of a financially-associated entity of the applicant; and
  - (g) the assets of a financially-associated entity of the applicant.

#### **5.9 Who is a financially-associated entity?**

- (1) A ***financially-associated entity*** of an applicant is any entity:
  - (a) to which one of the following applies:
    - (i) from which the applicant usually receives financial support;
    - (ii) to which the applicant usually provides financial support; and

- (b) that could reasonably be expected to financially assist the applicant in obtaining legal services.
- (2) For the purposes of determining whether a financially-associated entity of an applicant could reasonably be expected to financially assist an applicant to fund the legal action, the decision maker may have regard to any relevant matter including, but not limited to, whether:
- (a) the income or assets, or both, of the financially-associated entity of the applicant are available for the use or benefit of the applicant; or
  - (b) the applicant has access to the income or assets of the financially-associated entity of the applicant; or
  - (c) the financially-associated entity has a contrary interest to the applicant in the legal action.

#### **5.10 Additional considerations for entities other than individuals**

- (1) A publicly listed corporation is taken to have sufficient means to meet the cost of legal action without incurring serious financial difficulty.
- (2) If the applicant is not an individual, the decision maker may have regard to other financial resources that may be available to the applicant. This includes, but is not limited to, the following:
  - (a) if the entity is an incorporated body – the use of personal guarantees from directors of the body as security for a loan;
  - (b) if the entity has shareholders or members – the capacity of the entity to seek additional financial resources from the shareholders or members.

#### **5.11 What is income?**

**Income** includes, but is not limited to, the following:

- (a) wages or salaries;
- (b) business income;
- (c) any benefit payable under legislation by the Commonwealth or a State or Territory (for example, the amount of pension payable to the applicant);
- (d) workers compensation benefits;
- (e) superannuation payments;
- (f) maintenance payments;
- (g) proceeds from the rent or lease of property;
- (h) interest earned and dividends paid on investments.

### 5.12 What are assets?

- (1) **Assets** include, but are not limited to, property or money.
- (2) **Assets** do not include the following unless its value is unusually high:
  - (a) clothes;
  - (b) tools of trade;
  - (c) household furniture;
  - (d) equity in applicant's principal home;
  - (e) a motor vehicle which is reasonably necessary for domestic or employment purposes.

### 5.13 What are liabilities?

**Liabilities** are any amounts of money that the applicant is legally obliged to pay to another entity.

### 5.14 What are expenses?

**Expenses** are any amounts of money that the applicant usually or regularly pays or remits to obtain a good or service for the domestic or business purposes of the applicant.

### ***Subdivision B – What are the legal action considerations?***

### 5.15 What are the legal action considerations?

- (1) The **legal action considerations** to which a decision maker may have regard include, but are not limited to, the following:
  - (a) the prospects of success of the legal action;
  - (b) whether parties have taken genuine steps to resolve the dispute before initiating proceedings (within the meaning of the *Civil Dispute Resolution Act 2011*);

Note: This includes, for example, participating in mediation.
  - (c) whether the legal questions to be resolved will only benefit one entity;
  - (d) whether a decision in the proceeding will:
    - (i) settle an uncertain area of Commonwealth law; or
    - (ii) resolve an important question arising under Commonwealth law; or
    - (iii) stop an entity from suffering, or continuing to suffer from, a detriment;



- (e) whether a decision in the proceeding will resolve a question that affects a part of the community that is socially or economically disadvantaged;
  - (f) whether the Commonwealth law under which the question in the legal action arise has been amended to deal with the question in issue;
  - (g) whether a court has previously decided the same question of law or facts and only a few people were affected by the previous law;
  - (h) the number of people affected by the outcome of the court's decision;
  - (i) whether the applicant has previously taken legal action to deal with the same questions of law or facts;
  - (j) whether a party to the proceeding has been found by a court to be a vexatious litigant;
  - (k) whether there are questions of interpretation of State law or the common law in the legal action.
  - l) assistance for cases where the Commonwealth or State or Territory Government is a party and is to present public policy arguments on behalf of the Australian community will not be funded.
- (2) In determining the prospects of the success of the legal action, matters to which the decision maker may have regard include, but are not limited to, the following:
- (a) whether a party to the legal action has a reasonable case to argue;
  - (b) whether the legal action is fanciful or raises only speculative arguments.
- (3) In deciding whether a particular proceeding will settle an uncertain area of law, the decision maker may have regard to an opinion from counsel (whether sought by the Department or another entity) and the views of a relevant government organisation with responsibility for administering the relevant law.
- (4) In deciding whether a particular proceeding will resolve an important question arising under Commonwealth law that affects the national interest, the matters to which the decision maker may have regard include, but are not limited to, the following:
- (a) material prepared or provided by groups with a special interest in the law;
  - (b) a report of a Parliamentary Committee that deals with the law;
  - (c) a report of a commission of inquiry that deals with the law;
  - (d) the opinions of an agency with policy responsibility for the law.

***Subdivision C – What are the financial considerations?***

**5.16 What are the financial considerations?**

The ***financial considerations*** to which the decision maker may have regard include, but are not limited to, the following:

- (a) the likely cost of the legal action;
- (b) the availability of legal aid from a legal aid commission to fund the legal action;
- (c) the availability of funds, in any given year, under the legal financial assistance appropriation;
- (d) the number and relative merits of other applications for grants made under all schemes administered within the legal financial assistance appropriation;
- (e) the number and relative merits of grants likely to be made under all schemes administered within the legal financial assistance appropriation.

## PART 6 – GRANT OFFER AND AGREEMENT

### 6.1 Grant offer

If the decision maker decides to make the grant, the decision maker must, in writing, make a grant offer to:

- (a) if the applicant applied – the applicant; or
- (b) if a legal practitioner applied on behalf of the applicant – the legal practitioner; or
- (c) in any other case – the applicant and the entity that applied on behalf of the applicant.

### 6.2 Terms and conditions of the grant offer

- (1) The grant offer must include terms and conditions about the following:
  - (a) the maximum amount of financial assistance available under the grant (the **grant amount**);
  - (b) the maximum amount of financial assistance available under the grant in relation to a particular type of cost;
  - (c) the grant period for the purposes of section 6.8;
  - (d) if the Department requires the applicant to make a financial contribution under section 6.9 - the amount of the contribution;
  - (e) that a grant recipient must tell the Department of the name and contact details of any legal practitioner representing the grant recipient in the legal action;
  - (f) that if the legal action is ended by a settlement - that the terms of settlement must expressly permit the parties to disclose any information to the Department that the Department reasonably requires to:
    - (i) verify information in the grant letter; or
    - (ii) administer the grant; or
    - (iii) administer the scheme under which the grant is made.
- (2) The grant offer may set out other terms and conditions on which the grant is to be made.
- (3) In making the grant offer, the Department must have regard to any obligations with which the Department must comply under the *Financial Management Accountability Act 1997*.
- (4) The Department may withdraw a grant offer if:

- (a) the Department becomes aware that the applicant, or an entity that applies on behalf of the applicant, has provided dishonest, inaccurate or misleading information; or
- (b) the applicant, or an entity that applies on behalf of the applicant, fails to comply with a term or condition of the grant offer.

### 6.3 Grant agreement

- (1) The Department must enter into a grant agreement with a **grant agreement party** by agreeing the terms and conditions of the grant offer with the grant agreement parties.
- (2) A **grant agreement party** is, in addition to the Department:
  - (a) if the applicant applied – the applicant; or
  - (b) if a legal practitioner applied on behalf of the applicant – the legal practitioner; or
  - (c) if a legal practitioner applied on behalf of the applicant and there is more than one legal practitioner involved in the legal action to which the grant relates – each legal practitioner; or
  - (d) in any other case – the applicant and the entity that applied on behalf of the applicant.
- (3) Any changes made to the original terms and conditions in the grant offer must be in writing.
- (4) The grant offer (and any changes under subsection (3)) must be signed by the grant agreement party and received by the Department within 14 days of the grant offer before any financial assistance will be available.
- (5) The signed grant offer is a **grant agreement** and the applicant is then a **grant recipient**.

Note: See section 6.6 also for the meaning of **grant receipt**.

### 6.4 Obligation to comply with terms and conditions

- (1) Each grant agreement party is obliged to fulfil the terms and conditions set out in these guidelines and in the grant agreement.

### 6.5 Legal practitioner appointed after grant agreement signed by applicant

- (1) This section applies if the grant includes components for legal representation costs:
  - (a) a grant recipient is not represented by a legal practitioner at the time the grant recipient signs a grant agreement; and
  - (b) the grant recipient subsequently appoints one or more legal practitioners to act on behalf of the grant recipient for the purposes of the grant.

- (2) The grant recipient must tell the Department as soon as reasonably practicable the names of the appointed legal practitioners.
- (3) The Department must provide the grant agreement to each legal practitioner.
- (4) Each legal practitioner must, in writing, agree to the terms and conditions of the grant agreement.
- (5) The grant agreement is taken to have been varied to include each legal practitioner as a **grant agreement party**.
- (6) If each legal practitioner does not agree to the terms and conditions, the Department may:
  - (a) terminate the grant agreement; and
  - (b) require the grant recipient to make an application for a new grant under Part 4.

#### **6.6 Application of grant agreement to legal practitioners**

If a legal practitioner is a grant agreement party under section 6.3 or is taken to be a grant agreement party under section 6.5 then a reference to a **grant recipient** in these guidelines and the grant agreement is taken to be a reference to the legal practitioner if it is appropriate in the context for example paragraphs 7.8(2)(b) and 7.9(1)(a).

#### **6.7 No grants for retrospective costs**

- (1) A grant for financial assistance for retrospective costs must not be given, except in the most exceptional of circumstances.
- (2) **Retrospective costs** are costs incurred before the date on which the Department receives a complete application.

#### **6.8 Grant period**

- (1) A grant will generally be made for a period of 6 months and will generally start on the day a complete application is accepted by the Department.

Note: See section 4.3 for when a **complete application** is accepted by the Department.

- (2) A grant must not be made for a period exceeding 12 months.
- (3) A grant may relate to a particular instance of legal action (for example, a matter before the Migration Review Tribunal). A complete application under Part 4 for a new grant will be required for any subsequent instances of that legal action (for example, an appeal to the Federal Court of Australia).

Note: If financial assistance is provided for legal action at first instance, applicants should not assume that financial assistance will be available for subsequent instances.

#### **6.9 Contributions**

- (1) The decision maker may, in writing, request an applicant to make a contribution towards the cost of the legal action in relation to which a grant is made if:

- (a) the applicant does not have the means to meet the full cost of the legal action without incurring serious financial difficulty; but
- (b) the applicant has the means to meet part of the cost of the legal action without incurring serious financial difficulty.

Note: Matters to which the decision maker may have regard for the purposes of paragraph (1)(a) and (b) are those set out in Subdivision A of Division 3 of Part 5.

- (2) If the applicant is a group covered by paragraph (f) of the definition of **entity** in section 2.1 each member may be asked to contribute towards the cost of the legal action.

#### **6.10 Authority to seek further information**

By entering into the grant agreement, the grant recipient consents to the Department obtaining information about the grant, or the grant amount, from:

- (a) an agency;
- (b) an organisation that provides legal aid;
- (c) an overseas authority;
- (d) the applicant's legal practitioner

for the purpose of performing functions relating to the provision of legal financial assistance under these guidelines.

#### **6.11 Discretion of Attorney-General in relation to conditions of grant**

Nothing in this Part affects, or takes away, the discretion of the Attorney-General to add to, take away, or change conditions on which grants may be made.

## PART 7—FINANCIAL ASSISTANCE AVAILABLE UNDER GRANTS

### Division 1—Financial assistance generally

#### 7.1 Financial assistance available – overview

- (1) A grant for financial assistance for retrospective costs must not be given, except in the most exceptional of circumstances.

Note: **Retrospective costs** are costs incurred before the date on which the Department received a complete application.

- (2) The amount of financial assistance available under a grant will be calculated in accordance with the rates payable under these guidelines as in force from time to time and published on the Department's website.
- (3) The amount of financial assistance available under a grant in relation to particular costs, will also be calculated in accordance with the rates payable under these guidelines as in force from time to time and published on the Department's website.
- (4) The following table sets out the financial assistance that will generally be available under a grant.

	Scheme	Financial assistance available	
		Disbursements	Financial assistance other than disbursements
<b>Statutory schemes</b>			
1	section 30 of the <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> <sup>1</sup>	Yes	Yes
2	sections 54C and 74A of the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	Yes	No
3	section 30A of the <i>Administrative Appeals Tribunal Act 1975</i> <sup>2</sup>	Yes	Yes
4	Section 69 of the <i>Administrative Appeals Tribunal Act 1975</i> <sup>3</sup>	Yes	No
5	section 27 of the <i>Australian Crime Commission Act 2002</i>	Yes	No

<sup>1</sup> Legal representation costs are only available if the grant recipient is charged with an indictable offence under the Act.

<sup>2</sup> Disbursements are only available for matters before Tribunals; Legal representation costs are only available for matters before the Federal Court of Australia.

<sup>3</sup> Disbursements are only available for matters before Tribunals; Legal representation costs are only available for matters before the Federal Court of Australia.

	Scheme	Financial assistance available	
		Disbursements	Financial assistance other than disbursements
6	section 46PU of the <i>Australian Human Rights Commission Act 1986</i>	Yes	Yes
7	section 170 of the <i>Competition and Consumer Act 2010</i> <sup>4</sup>	Yes	Yes
8	subregulations 11(4) and (5) of the <i>Defence Force Discipline Appeals Tribunal Regulation 1957</i>	Yes	Yes
9	subsections 324(1), 326(1), 326(4) and 326(5) of the <i>Fair Work (Registered Organisations) Act 2009</i>	Yes	Yes
10	section 66 of the <i>Freedom of Information Act 1982</i>	Yes	Yes
11	subsections 69(3) and 78B(4) of the <i>Judiciary Act 1903</i>	Yes	Yes
12	subsection 6(7) of the <i>Jurisdiction of Courts (Cross-Vesting) Act 1987</i>	Yes	Yes
13	sections 103 and 221 of the <i>Law Enforcement Integrity Commissioner Act 2006</i>	Yes	Yes
14	section 63 of the <i>Privacy Act 1988</i>	Yes	No
15	section 102 of the <i>Proceeds of Crime Act 1987</i> <sup>5</sup>	Yes	Yes
16	section 19 of the <i>War Crimes Act 1945</i>	Yes	Yes
<b>Non-statutory schemes</b>			
17	serious overseas criminal matters	Yes	Yes
18	overseas child abduction	Yes	Yes
19	commonwealth public interest and test cases	Yes	Yes
20	royal commissions and inquiries (other than the <i>Royal Commission into Institutional Responses to Child Sexual Abuse</i> ).	Yes	Yes
21	special circumstances	Yes	Yes

<sup>4</sup> Legal representation costs are only available for matters before the Federal Court of Australia.

<sup>5</sup> This Act has been repealed. This provision only applies to matters arising prior to the new *Proceeds of Crime Act 2002*, which commenced on 1 January 2003.



	Scheme	Financial assistance available	
		Disbursements	Financial assistance other than disbursements
22	disbursement support	Yes	No

## 7.2 What is financial assistance?

**Financial assistance** is money available under a grant including the following:

- (a) disbursements;
- (b) legal representation costs.

## 7.3 What are *disbursements*?

- (1) **Disbursements** are amounts of money paid by an entity to discharge a debt or expense for the purposes of legal action.
- (2) **Disbursements** include, but are not limited to, the following:
  - (a) fees in relation to initiating or taking a step in Australian legal proceedings;
  - (b) fees in relation to initiating or taking a step in overseas legal proceedings;
  - (c) fees for the preparation of medico-legal reports;
  - (d) fees for the preparation of expert opinions;
  - (e) travel expenses covered by subsection 7.9(1);
  - (f) fees for obtaining copies of reports and records;
  - (g) fees charged for the provision of transcripts from courts;
  - (h) fees charged by interpreters;
  - (i) any other item contained within the rates payable under these guidelines as in force from time to time and published on the Department's website.
- (3) **Disbursements** do not include any of the following:
  - (a) legal representation costs for a legal practitioner in an Australian legal proceeding or an overseas legal proceeding;
  - (b) travel expenses covered by subsection 7.9(2).

## 7.4 What are legal representation costs?

**Legal representation costs** are costs incurred for legal representation in legal action (other than disbursements).

## **7.5 Excluded costs**

Financial assistance for disbursements and legal representation costs will not generally be available for the following:

- (a) compensation for loss of earnings due to time spent in preparing for, or appearing in, legal action;
- (b) compensation for costs (including legal representation costs) incurred by an applicant to make an application under Part 4;
- (c) compensation for costs (including legal representation costs) incurred by a grant recipient in dealing with the Department in relation to the grant;
- (d) compensation for costs incurred in the preparation of an itemised bill of costs;
- (e) giving an indemnity for costs that may be awarded against the grant recipient;
- (f) travel for the purposes of participating in legal action in person unless attendance is reasonably required by an entity presiding over the action;
- (g) travel for the purposes of visiting a party to legal action who has been legally detained;
- (h) travel for the purposes of exercising rights of access to a child under 16;
- (i) living expenses;
- (j) filing fees for courts in jurisdictions where the court is able to waive all or part of the filing fee;
- (k) a fee paid to a legal practitioner in advance to secure the legal practitioner to act on the grant recipient's behalf (whether or not it is described as a retainer).

## **7.6 Discretion of Attorney-General in relation to financial assistance**

Nothing in this Part affects, or takes away, the discretion of the Attorney-General to add to, take away or change the financial assistance available under grants.

## **Division 2—Additional conditions for serious overseas criminal matters and overseas child abduction**

### **7.7 Application**

This Division applies for the purpose of calculating financial assistance available under a grant under the serious overseas criminal matters or the overseas child abduction scheme.

### **7.8 Calculating legal representation costs for overseas legal action**

- (1) In calculating financial assistance available for overseas legal action, the Department may have regard to any document of the other country that the Department is satisfied provides comparable rates to those funded under these guidelines.
- (2) Financial assistance will not generally be available for:
  - (a) legal representation costs incurred in Australia; or
  - (b) costs for a legal practitioner who travels overseas to represent a grant recipient or
  - (c) legal representation costs relating to overseas contact order proceedings or proceedings of similar nature.

### **7.9 Travel expenses**

- (1) Financial assistance for reasonable travel may be available for the following:
  - (a) for the serious overseas criminal matters scheme – travel expenses by a an overseas legal practitioner within the other country (or part of the country) in which the grant recipient is being prosecuted for an offence;
  - (b) for the overseas child abduction scheme:
    - (i) travel expenses for return travel by an individual whose rights of custody have been breached from Australia to the country to which the child has been removed, or in which the child is retained, for the purposes of participating in overseas legal proceedings, the individual's presence at which is reasonably required; and
    - (ii) travel expenses for return travel by an individual whose rights of custody have been breached from Australia to the country to which the child has been removed, or in which the child is retained, for the purposes of returning the child to Australia; and
    - (iii) travel expenses for travel to Australia by the child.
- (2) Financial assistance will not generally be available for the travel expenses of a friend, relative or other support person (unless subsection (1) also applies to that person).

## **PART 8—ADMINISTRATION OF THE GRANT**

### **Division 1—General administration**

#### **8.1 Discretion of Attorney-General in relation to administration not affected**

Nothing in this Part affects, or takes away, the discretion of the Attorney-General to add to, take away, or change the following:

- (a) how grants to which these guidelines apply are administered, varied or ended;
- (b) how financial assistance under grants is administered, paid, withheld or recovered.

#### **8.2 Obligations on grant recipients in relation to information**

- (1) Grant recipients must give accurate and honest information that is not misleading to the Department when requested under section 8.3 or if required to do so under section 8.4.
- (2) Commonwealth law includes offences with penalties of up to 10 years' imprisonment for persons who do any of the following:
  - (a) make false or misleading statements or provide false or misleading information (including omitting information);
  - (b) obtain property or financial advantage by deception;
  - (c) do something dishonestly to obtain a gain or a financial advantage;
  - (d) influence a commonwealth official;
  - (e) use forged documents.

#### **8.3 Department may ask for information**

- (1) The Department may, by notice in writing, ask a grant recipient to provide any information that the Department reasonably requires to:
  - (a) verify information; or
  - (b) administer the grant; or
  - (c) administer the scheme under which the grant is made.
- (2) In the notice, the Department may specify that the information must be provided:
  - (a) at regular intervals (for example, each month) during the grant period; or
  - (b) within a specified period.

#### 8.4 Grant recipients must tell the Department when certain things happen

(1) A grant recipient must tell the Department in writing as soon as is reasonably practicable and before the end of the grant period, if:

(a) both of the following apply:

- (i) a grant relates to a particular instance of legal action as mentioned in subsection 6.8(3);
- (ii) the grant recipient takes steps to withdraw from, discontinue or otherwise end the legal action; or

Note: An example of this is the grant recipient settling legal proceedings out of court (see section 8.14).

(b) both of the following apply:

- (i) a grant relates to a particular instance of legal action as mentioned in subsection 6.8(3);
- (ii) the instance of legal action is determined before the end of the grant period; or

(c) both of the following apply:

- (i) a grant relates to a particular instance of legal action as mentioned in subsection 6.8(3);
- (ii) the instance of legal action will not have been determined before the end of the grant period; or

(d) one or more of the grant recipient's legal practitioners changes; or

(e) the grant recipient believes that, by incurring a cost, the grant recipient will exceed the grant amount; or

(f) the grant recipient believes that, by incurring a cost, the grant recipient will exceed the maximum amount of financial assistance available under the grant in relation to a particular type of cost; or

(g) both of the following apply:

- (i) the grant period ends;
- (ii) the grant recipient needs longer than 30 days to submit outstanding invoices to the Department for payment (see section 8.15); or

(h) the grant recipient's circumstances change and the change may affect the grant.

Note: if paragraph (1)(e) applies – before the grant recipient incurs the cost, a new, complete application must be submitted to the Department.

**8.5 Notices about determined proceedings**

For the purposes of paragraph 8.4(1)(b), the grant recipient must tell the Department:

- (a) the decision made in the legal action; and
- (b) whether a costs order was made; and
- (c) if a costs order was made – details of the costs awarded.

## Division 2—Consequences of certain events for grants

### 8.6 Consequences of certain events for grant

- (1) The following table sets out by indicating a tick the action that the Department may take if certain events occur that affect grants.
- (2) If there is more than one possible consequence for an event, the Department must decide what the consequence (if any) will be and tell the grant recipient in writing.

	Event	Possible consequence			
		termination of grant agreement	variation of grant agreement	withholding financial assistance	recovery of paid financial assistance
1	Grant recipient provides dishonest, inaccurate or misleading information.	Yes		Yes	Yes
2	Grant recipient fails to tell Department about something under section 8.3, 8.4, 8.5 or 8.15	Yes		Yes	Yes
3	Grant recipient fails to comply with a term or condition of grant agreement or another obligation in these guidelines not specifically mentioned in this table	Yes	Yes	Yes	Yes
4	Grant recipient fails to comply with subsection 8.3(2) (period within which information must be provided)	Yes		Yes	
5	Grant recipient exceeds grant amount by incurring a cost			Yes	
6	Grant recipient, by incurring a cost, exceeds the maximum amount of financial assistance available under grant in relation to a particular type of cost			Yes	
7	Grant recipient takes steps to withdraw from, discontinue or otherwise end legal action	Yes	Yes	Yes	Yes
8	Grant recipient takes no steps to pursue legal action	Yes			

	Event	Possible consequence			
		termination of grant agreement	variation of grant agreement	withholding financial assistance	recovery of paid financial assistance
9	Instance of legal action is determined before end of the grant period	Yes	Yes		
10	Instance of legal action is not determined before end of the grant period		Yes		
11	One or more of grant recipient's legal practitioner changes but does not inform the Department	Yes	Yes		
12	Grant recipient does not tell Department about change in circumstances change that affect the grant	Yes	Yes	Yes	Yes
13	Grant recipient fails to apply for a costs order as mentioned in section 8.13			Yes	Yes
14	Costs order is made in grant recipient's favour, but grant recipient fails to repay Department or fails to do so within required period				Yes
15	Grant recipient settles and doesn't repay grant as in section 8.14			Yes	Yes
16	Legal practitioner representing the grant recipient does an act that constitutes professional misconduct	Yes			
17	Grant recipient fails to submit invoices within period in section 8.15	Yes		Yes	

### 8.7 Events resulting in termination of grant agreements

If the Department may terminate a grant agreement as a consequence of an event, the Department may also:

- (a) refuse to pay an amount of financial assistance that was payable before the date of termination;
- (b) take steps to recover an amount of financial assistance already paid as described in section 8.11.



## **8.8 Events requiring new grant agreements**

- (1) If any of the following events happen, the Department must require the grant recipient to make a complete application for a new grant under Part 4:
  - (a) one or more of the grant recipient's legal practitioner changes and the Department determines a new agreement is necessary due to change in legal representation;
  - (b) the grant recipient tells the Department that the grant recipient will exceed the grant amount as mentioned in paragraph 8.4(1)(e);
  - (c) the grant recipient tells the Department that the grant recipient will exceed the maximum amount of financial assistance available under the grant in relation to a particular type of cost as mentioned in paragraph 8.4(1)(f).
  - (d) funding is required for a new stage of a proceeding.

Note: if a new application is required as a result of paragraph 8.4(1)(e), the new grant may commence from the date of the notification, where the complete application is submitted within 14 days of that notification.

- (2) In determining the amount of financial assistance available under a new grant for the purposes of paragraph (1)(a), the Department may have regard to the amount of financial assistance paid or payable under the old grant.
- (3) With the exception of submission of final invoice assessment and review, the old grant agreement will be terminated before the new grant starts.

## **8.9 Events resulting in variation of the grant agreement**

- (1) If the Department may vary a grant agreement, the Department must tell the grant recipient in writing about the variation.
- (2) With the exception of review outcomes, the grant agreement is taken to have been varied to reflect the Department's decision.

## **8.10 Events resulting in withholding of financial assistance**

- (1) If the Department may withhold financial assistance that is, or will be, payable under a grant as a consequence of an event, the Department must tell the grant recipient in writing how much and for what period the Department will withhold financial assistance.
- (2) The grant agreement is taken to have been varied to reflect the Department's decision.

## **8.11 Events requiring payment recovery**

Consistent with the terms of any grant agreement, if a grant recipient is required to repay all or part of the grant amount to the Department, that amount will be a debt owing to the Commonwealth and the Commonwealth will pursue recovery of that amount where it is required to do so under the *Financial Management and Accountability Act 1997*.

### Division 3—Financial obligations on grant recipients

#### 8.12 Monitoring grant amount

- (1) Grant recipients are responsible for monitoring costs incurred or paid for the purposes of legal action to make sure that:
  - (a) the grant amount is not exceeded; and
  - (b) the maximum amount of financial assistance available under the grant in relation to a particular type of cost is not exceeded.

Note: Refer to 8.4(1) and (2) of these guidelines

- (2) One way a grant recipient may do this is by submitting accounts to the Department on a regular basis for payment of financial assistance available under the grant.

Note: The grant recipient may also be required to do this by the Department (see section 8.3).

#### 8.13 Costs orders

- (1) Grant recipients must apply for costs orders in Australian legal proceedings if the court hearing the proceedings decides in favour of the grant recipient.
- (2) If the court makes a costs order, the grant recipient must repay the grant amount (or as much of the grant amount as is covered by the costs order) to the Department within 60 days of the latest of the following days:
  - (a) the day on which judgment is handed down;
  - (b) the day on which the grant recipient receives settlement funds;
  - (c) the day on which taxed or agreed costs are finalised.
- (3) If the grant recipient does not repay the grant amount (or the part of the grant amount), the Department must take steps to recover the grant amount as described in section 8.11.

Note: The Department is obliged to undertake recovery proceedings under the *Financial Management and Accountability Act 1997*.

#### 8.14 Settlements

If a grant recipient settles legal action, the grant recipient must repay the grant amount (or as much of the grant amount as is covered by the amount of the settlement) to the Department within 60 days of the latest of the following days:

- (a) the day on which the grant recipient receives settlement funds;
- (b) the day on which taxed or agreed costs are finalised.

Note: The grant recipient must pay the Commonwealth before any other costs are paid.

**8.15 Obligations on grant recipient in relation to end of grant period**

- (1) A grant recipient must submit any outstanding invoices for financial assistance available under the grant to the Department within 30 days after the day on which the grant period ends.
- (2) The Department may allow the grant recipient only one further period of 14 days within which to submit the invoices, only where the grant recipient requests the extension prior to grant end date.

Note: The grant recipient is required to tell the Department if this happens (see paragraph 8.4(1)(g)).

## **PART 9—REVIEW OF DECISIONS**

### **9.1 Discretion of the Attorney-General in relation to review of decisions**

Nothing in this Part affects, or takes away, the discretion of the Attorney-General to add to, take away or change the process for review of decisions on grants to which these guidelines apply.

### **9.2 Review of decisions**

- (1) This section applies if a decision maker decides (the reviewable decision):
  - (a) to refuse a grant application; or
  - (b) to make a grant less than the applicant sought; or
  - (c) to make a grant on terms and conditions (whether set out in these guidelines or in the grant offer); or
  - (d) to take action if an event occurs (see Division 2 of Part 8).
- (2) This section does not apply if the reviewable decision is made because there are no funds available to make a grant under these guidelines.
- (3) The applicant or grant agreement party (other than the Department) may apply for internal review of the reviewable decision within 28 days after the day the entity is notified of the decision.
- (4) The Department must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (5) The decision maker must decide the application for review within 28 days of the receipt by the Department.
- (6) The review grant offer letter will need to be signed by the grant recipient and any other party to the agreement.

### **9.3 External review options**

- (a) An entity may be able to seek judicial review of decisions relating to the provision of financial assistance made under some of the statutory schemes under the *Administrative Decisions (Judicial Review) Act 1977*.
- (b) An entity may seek judicial review of a decision relating to financial assistance made by an officer of the Commonwealth, including a decision made under one of the non-statutory schemes, under s 39B of the *Judiciary Act 1903*.

Note: Judicial review involves an assessment of the legality of a decision — for example whether the decision was within power or whether procedural fairness was afforded to an applicant in making the decision. The remedies available from judicial review typically involve quashing the original decision and remitting the decision to the original decision maker with an order to remake the decision according to law. The court cannot remake a decision or look at the merits of a decision.

#### **9.4 Complaints to the Ombudsman**

If an entity is dissatisfied with any aspect of the administration of an application or grant, the entity may complain to the Commonwealth Ombudsman.

#### **9.5 Freedom of Information Act 1982**

A person may apply for access to documents under the *Freedom of Information Act 1982*. Section 15 of that Act sets out what is required for an application. The application must:

- (a) be in writing; and
- (b) state that the request is an application for the purposes of that Act; and
- (c) provide such information concerning the document requested as is reasonably necessary to enable the Department to identify it; and
- (d) give details of how notices under that Act may be sent to the person; and
- (e) be accompanied by payment of the fee required; and
- (f) be lodged at an office of the agency; and
- (g) request the particular form of access.

#### **9.6 Obligations of the Department in relation to confidentiality, privacy and conflict of interest**

- (1) Officers of the Department are obliged to maintain the confidentiality of information. It is an offence under the *Crimes Act 1914* if officers fail to do so.
- (2) The Department must comply with the *Privacy Act 1988*. An individual may complain to the Privacy Commissioner if the individual believes the individual's privacy has been interfered with by the Department.
- (3) An officer of the Department must disclose any interest that the officer has if that interest could conflict with the proper performance of their duties under the guidelines. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (4) Subsection (3) applies to interests:
  - (a) Whether direct or indirect, and whether or not pecuniary; and
  - (b) Whether acquired before or after the officer's duties under the guidelines arose.
- (5) If a conflict of interest arises, the Department must utilise the established internal processes in place for managing the conflict of interest.

## **PART 10 — TRANSITIONAL PROVISIONS**

### **10.1 Existing grants unaffected**

- (1) This guideline applies if a grant agreement was entered into before these guidelines started.
- (2) The grant agreement continues until the grant agreement would have ended had these guidelines not started.

### **10.2 Applications on foot**

- (1) This guideline applies if an application for a grant was received, but the Department had not decided it, before these guidelines started.
- (2) The application must be decided under the guidelines applicable on the date that the application the Attorney-General's Department received the application.