



Australian Government
Attorney-General's Department

Social Inclusion Division

**COMMONWEALTH GUIDELINES FOR LEGAL
FINANCIAL ASSISTANCE UNDER S34ZX OF
THE AUSTRALIAN SECURITY INTELLIGENCE
ORGANISATION ACT 1979 (2014)**

Table of Provisions

PART 1—PRELIMINARY

1.1	Citation	4
1.2	When do these guidelines start?	4
1.3	When do these guidelines end?	4
1.4	Purpose	4
1.5	Scope	4
1.6	Overview of process for getting grants	4

PART 2—INTERPRETATION

2.1	Definitions.....	6
2.2	Definitions throughout the guidelines.....	7
2.3	Principles of interpretation	8
2.4	References to amounts of money.....	8

PART 3—THE SCHEME TO WHICH THESE GUIDELINES APPLY

3.1	Which scheme is covered by these guidelines?	9
-----	--	---

PART 4 – APPLICATION PROCESS

4.1	Who can get a grant?	10
4.2	Application for grant.....	10
4.3	What is a complete application?	10
4.4	What does accepted by the department as a complete application mean?.....	11
4.5	Request for further information.....	11
4.6	Consent to obtaining further information.....	11
4.7	Responsibilities of applicants	11
4.8	Discretion of Attorney-General in relation to processing applications not affected	12

PART 5—DECISIONS ON APPLICATIONS

DIVISION 1—GENERAL PRINCIPLES

5.1	Making a decision on an application.....	13
5.2	Notice of decision	13
5.3	Discretion of Attorney-General in relation to deciding applications for grants not affected.	14

DIVISION 2—WHAT ARE THE SPECIAL CONSIDERATIONS?

5.4	What are the special considerations?.....	15
-----	---	----

DIVISION 3—WHAT DOES REASONABLE IN THE CIRCUMSTANCES MEAN?

5.5	How does a decision maker decide what is <i>reasonable in the circumstances</i> ?.....	16
-----	--	----

SUBDIVISION A – WHAT ARE THE APPLICANT CONSIDERATIONS?

5.6	What are the applicant considerations?.....	16
5.7	Who is a financially-associated entity?.....	16
5.8	What is income?.....	17
5.9	What are assets?.....	17
5.10	What are liabilities?.....	18
5.11	What are expenses?.....	18
	<i>SUBDIVISION B – WHAT ARE THE FINANCIAL CONSIDERATIONS?</i>	
5.12	What are the financial considerations?.....	18
	PART 6 – GRANT OFFER AND AGREEMENT	
6.1	Grant offer.....	19
6.2	Terms and conditions of the grant offer.....	19
6.3	Grant agreement.....	20
6.4	Obligation to comply with terms and conditions.....	20
6.5	Legal practitioner appointed after grant agreement signed by applicant.....	20
6.6	Application of grant agreement to legal practitioners.....	21
6.7	No grants for retrospective costs.....	21
6.8	Grant period.....	21
6.9	Contributions.....	21
6.10	Authority to seek further information.....	22
6.11	Discretion of Attorney-General in relation to conditions of grant.....	22
	PART 7—FINANCIAL ASSISTANCE AVAILABLE UNDER GRANTS	
7.1	Financial assistance available – overview.....	23
7.2	What is <i>financial assistance</i> ?.....	23
7.3	What are <i>disbursements</i> ?.....	23
7.4	What are <i>legal representation costs</i> ?.....	23
7.5	Excluded costs.....	24
7.6	Discretion of Attorney-General in relation to financial assistance.....	24
	PART 8—ADMINISTRATION OF THE GRANT	
	<i>DIVISION 1—GENERAL ADMINISTRATION</i>	
8.1	Discretion of Attorney-General in relation to administration not affected.....	25
8.2	Obligations on grant recipients in relation to information.....	25
8.3	Department may ask for information.....	25
8.4	Grant recipients must tell the department when certain things happen.....	26
	<i>DIVISION 2—CONSEQUENCES OF CERTAIN EVENTS FOR GRANTS</i>	
8.5	Consequences of certain events for grant.....	27
8.6	Events resulting in termination of grant agreements.....	28
8.7	Events requiring new grant agreements.....	28
8.8	Events resulting in variation of the grant agreement.....	29
8.9	Events resulting in withholding of financial assistance.....	29
8.10	Events requiring payment recovery.....	29
	<i>DIVISION 3—FINANCIAL OBLIGATIONS ON GRANT RECIPIENTS</i>	
8.11	Monitoring grant amount.....	30
8.12	Obligations on grant recipient in relation to end of grant period.....	30
	PART 9—REVIEW OF DECISIONS	
9.1	Discretion of the Attorney-General in relation to review of decisions.....	31
9.2	Review of decisions (internal review).....	31
9.3	External review options.....	31
9.4	<i>Freedom of Information Act 1982</i>	32
9.5	Obligations of the department in relation to confidentiality, privacy, secrecy and conflict of interest.....	32

PART 10—TRANSITIONAL PROVISIONS

10.1	Existing grants unaffected	33
10.2	Applications on foot	33

PART 1—PRELIMINARY

1.1 Citation

These guidelines are the *Commonwealth Guidelines for Legal Financial Assistance under s34ZX of the Australian Security Intelligence Organisation Act 1979 (2014)*.

1.2 When do these guidelines start?

These guidelines start ten days after approval by the Attorney-General.

1.3 When do these guidelines end?

These guidelines end when s34ZX *Australian Security Intelligence Organisation Act 1979* ceases to have effect, unless revoked earlier.

Note: Under s34ZZ *Australian Security Intelligence Organisation Act 1979*, Division 3 of Part III ceases to have effect on 22 July 2016.

[Update inserted by the Attorney-General's Department: Section 34ZZ of the *Australian Security Intelligence Organisation Act 1979* was amended on 1 December 2014. Division 3 of Part III (including section 34ZX) will now cease to have effect on 7 September 2018.]

1.4 Purpose

- (1) These guidelines deal with making grants of financial assistance under s34ZX *Australian Security Intelligence Organisation Act 1979*, to persons subject to a warrant issued under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* (**the ASIO scheme**).

1.5 Scope

- (2) Grants under the ASIO scheme covered by these guidelines are made at the discretion of the Attorney-General.
- (3) A person who is the subject of a warrant for questioning issued pursuant to Division 3 of Part III of *Australian Security Intelligence Organisation Act 1979* is entitled to apply for financial assistance under these guidelines to cover legal and related expenses in relation to the person's appearance before a prescribed authority for questioning under the warrant.
- (4) 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, to officers in the Attorney-General's Department in relation to grants.
- (3) Applicants are required to submit sufficient information to enable the department to deal with the application. Applicants should not include any operational information which they may have as a result of the issue or execution of a warrant pursuant to Division 3 of Part III of *Australian Security Intelligence Organisation Act 1979*. Applicants have other responsibilities under these guidelines and under a grant offer.
- (4) Decisions to make grants are made with regard to:
 - (a) the purpose of the ASIO scheme (see section 1.4); and
 - (b) the scope of the ASIO scheme (see section 1.5); and
 - (c) the special considerations in relation to the ASIO scheme (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.
- (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.

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

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 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.

offence means an offence against an Australian law or a law of another country.

scheme means the 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.

	Word or phrase	Where is it defined?
1	accepted by the department as a complete application	section 4.4
2	applicant considerations	subsection 5.6(1)
3	assets	section 5.9
4	complete application	section 4.3
5	disbursements	section 7.3
6	expenses	section 5.11
7	financial assistance	section 7.2
8	financially-associated entity	section 5.7
9	financial circumstances	subsection 5.6(2)
10	financial considerations	section 5.12
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 5.8
16	legal representation costs	section 7.4
17	liabilities	section 5.10
18	reasonable in the circumstances	section 5.5
19	retrospective costs	section 6.7(2)
20	reviewable decision	subsection 9.2(1)
21	special considerations	section 5.4

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*.

PART 3—THE SCHEME TO WHICH THESE GUIDELINES APPLY

3.1 Which scheme is covered by these guidelines?

These guidelines cover section 34ZX of the *Australian Security Intelligence Organisation Act 1979*, the ASIO scheme.

PART 4—APPLICATION PROCESS

4.1 Who can get a grant?

- (1) A person may get a grant under the ASIO scheme if:
 - (a) the person meets the qualification for getting a grant that is specified in section 34ZX *Australian Security Intelligence Organisation Act 1979*; and
 - (b) the person is not getting, or would not get, financial assistance from a legal aid commission.

4.2 Application for grant

- (1) An application for a grant under the ASIO scheme may be made by, or on behalf of, a person 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) made in writing by completing the appropriate form provided by the department; and
- (b) made in accordance with the terms of any authorisation that permits disclosure of information for the purpose of making an application for financial assistance. The applicant should not include any operational information which they may have as a result of the issue or execution of a warrant pursuant to Division 3 of Part III of *Australian Security Intelligence Organisation Act 1979*; and
- (c) submitted to the department by mail to:

Assistant Secretary

Legal Assistance Branch (or other specified contact consistent with 4.3(b))

Attorney-General's Department

3-5 National Circuit

BARTON ACT 2600; and

- (d) 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.

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) the Australian Security Intelligence Organisation
- (c) an organisation that provides legal aid;
- (d) the applicant's legal practitioner; or
- (e) an independent legal practitioner;

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

Note: When a request is made to obtain further information, the department will adhere to the secrecy obligations set out in section 34ZS of *the Australian Security Intelligence Organisation Act 1979*, to the extent that those obligations apply in the circumstances.

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; or
 - (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 the ASIO scheme, a decision maker must have regard to:
 - (a) the purpose of the ASIO scheme (see section 1.4); and
 - (b) the scope of the ASIO scheme (see section 1.5); and
 - (c) the special considerations (see section 5.4); and
 - (d) whether it is reasonable in all the circumstances to make the grant (see section 5.5); 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 make an application, the decision maker must decide the application within 28 days of the receipt of the complete application by the department.

Note: The department may seek further information, even if an application is complete.

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.

Note: Grant offers are dealt with under Part 6.

5.3 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*?

5.4 What are the special considerations?

- (1) The special considerations are considerations that the decision maker must have regard to.
- (2) The special considerations in relation to the ASIO scheme are:
 - (a) as stated in s34ZX of the *Australian Security Intelligence Organisation Act 1979*; and
 - (b) whether the applicant could suffer a detriment by the applicant's appearance before a prescribed authority for questioning under the warrant.

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

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

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; and
- (b) the financial considerations.

Subdivision A – What are the applicant considerations?

5.6 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 representation in respect of the person's appearance before a prescribed authority for questioning under the warrant, 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, as a result of the questioning and/or detention by a prescribed authority, under the warrant.

(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.

5.7 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 representation in respect of the person's appearance before a prescribed authority for questioning under the warrant, 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 respect of the person's appearance before a prescribed authority for questioning under the warrant; or
 - (d) whether, due to special circumstances relating to the secrecy obligations in relation to the warrant, it would not be reasonable in these circumstances for the applicant to be financially assisted by someone who might ordinarily be a financially associated entity.

5.8 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.

5.9 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.

5.10 What are liabilities?

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

5.11 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 financial considerations?

5.12 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 representation in respect of the person's appearance before, and/or detention by, a prescribed authority for questioning under the warrant;
- (b) the availability of legal aid from a legal aid commission to fund the legal representation in respect of the person's appearance before, and/or detention by, a prescribed authority for questioning under the warrant;
- (c) the number and relative merits of other applications for grants made under all schemes administered within the legal financial assistance appropriation;
- (d) 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 respect of the person's appearance before a prescribed authority for questioning under the warrant.
- (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 *Public Governance, Performance and Accountability Act 2013*.
- (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) 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 recipient**.

6.4 Obligation to comply with terms and conditions

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.

6.7 No grants for retrospective costs

- (1) A grant for financial assistance for retrospective costs will generally not be given, except in exceptional circumstances.
- (2) **Retrospective costs** are costs incurred before the date on which the department receives a complete application.
- (3) Exceptional circumstances are considered to exist where there is less than 28 days between the date the applicant is notified of the warrant for questioning issued pursuant to Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*, and the date the applicant's appearance, pursuant to the warrant before a prescribed authority for questioning is required.
- (4) Where exceptional circumstances exist, an application for financial assistance must be received by the department as soon as practicable, but no later than 28 days after the end of the questioning under the warrant.

6.8 Grant period

- (1) A grant will generally be made in respect of the persons' appearance, pursuant to the warrant, before a prescribed authority for questioning, 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) Where exceptional circumstances exist the grant period will start on the date the applicant is notified of the warrant for questioning.
- (3) A grant may relate to a particular instance of the person's appearance before a prescribed authority for questioning under the warrant. A complete application under Part 4 for a new grant will be required for any subsequent warrants.

6.9 Contributions

- (1) The decision maker may, in writing, request an applicant to make a contribution towards the cost of the legal representation 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 representation and related expenses in respect of the person's appearance before, and/or detention by, a prescribed authority for questioning without incurring serious financial difficulty; but
- (b) the applicant has the means to meet part of the cost of the legal representation and related expenses in respect of the person's appearance before, and/or detention by, a prescribed authority for questioning 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 of these guidelines.

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) the Australian Security Intelligence Organisation;
- (c) an organisation that provides legal aid;
- (d) the applicant's legal practitioner; or
- (e) an independent legal practitioner;

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

Note: When a request is made to obtain further information, the department will adhere to the secrecy obligations set out in section 34ZS of the *Australian Security Intelligence Organisation Act 1979*, to the extent that those obligations apply in the circumstances.

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

7.1 Financial assistance available – overview

- (1) 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, and set out in the *Commonwealth Legal Financial Assistance Schemes Assessment of Costs* document as published from time to time.
- (2) 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.

7.2 What is *financial assistance*?

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

- (a) disbursements; and
- (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 the person's appearance, pursuant to the warrant, before a prescribed authority for questioning.
- (2) **Disbursements** include, but are not limited to, the following:
 - (a) travel expenses for the applicant to appear, pursuant to the warrant, before a prescribed authority for questioning;
 - (b) travel expenses for the applicant's legal practitioner, for the legal practitioner's attendance at the applicant's appearance, pursuant to the warrant, before a prescribed authority for questioning;
 - (c) fees for obtaining copies of reports and records;
 - (d) fees charged by interpreters;
 - (e) 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.

7.4 What are *legal representation costs*?

Legal representation costs are costs incurred for legal representation in respect of the person's appearance before a prescribed authority for questioning under a warrant.

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 before a prescribed authority;
- (b) compensation for loss of earnings due to time spent in detention pursuant to a warrant;
- (c) compensation for costs (including legal representation costs) incurred by an applicant to make an application under Part 4;
- (d) compensation for costs (including legal representation costs) incurred by a grant recipient in dealing with the department in relation to the grant;
- (e) compensation for costs incurred in the preparation of an itemised bill of costs;
- (f) living expenses;
- (g) 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);
- (h) any costs excluded under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*, particularly section 34ZX(5).

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.

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 the person's appearance before a prescribed authority for questioning under the warrant as mentioned in subsection 6.8(2); and
 - (ii) the particular instance of the person's appearance before a prescribed authority for questioning under the warrant is finished before the end of the grant period; or
 - (b) both of the following apply:
 - (i) a grant relates to a particular instance of the person's appearance before a prescribed authority for questioning under the warrant as mentioned in subsection 6.8(2); and
 - (ii) the particular instance of the person's appearance before a prescribed authority for questioning under the warrant is not finished before the end of the grant period; or
 - (c) one or more of the grant recipient's legal practitioners changes; or
 - (d) the grant recipient believes that, by incurring a cost, the grant recipient will exceed the grant amount; or
 - (e) 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
 - (f) both of the following apply:
 - (i) the grant period ends; and
 - (ii) the grant recipient needs longer than 30 days to submit outstanding invoices to the department for payment (see section 8.12); or
 - (g) the grant recipient's circumstances change and the change may affect the grant.

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

Division 2—Consequences of certain events for grants

8.5 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.	✓		✓	✓
2	Grant recipient fails to tell department about something under section 8.3, 8.4, 8.5 or 8.12	✓		✓	✓
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	✓	✓	✓	✓
4	Grant recipient fails to comply with subsection 8.3(2) (period within which information must be provided)	✓		✓	
5	Grant recipient exceeds grant amount by incurring a cost			✓	
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			✓	

7	One or more of grant recipient's legal practitioner changes but does not inform the department	✓	✓		
8	Grant recipient does not tell department about a change in circumstances that affects the grant	✓	✓	✓	✓
9	Grant recipient fails to submit invoices within period in section 8.12	✓		✓	

8.6 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; and/or
- (b) take steps to recover an amount of financial assistance already paid as described in section 8.10.

8.7 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)(d);
 - (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)(e).
 - (d) funding is required for a new appearance before a prescribed authority for questioning under a new warrant.

Note: if a new application is required as a result of paragraph 8.4(1)(d), 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.

8.8 Events resulting in variation of the grant agreement

- (1) If the department varies 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.

8.9 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.

8.10 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 *Public Governance, Performance and Accountability Act 2013*.

Division 3—Financial obligations on grant recipients

8.11 Monitoring grant amount

- (1) Grant recipients are responsible for monitoring costs incurred or paid 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).

8.12 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)(f)).

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 (internal review)

- (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 seek judicial review of a decision relating to financial assistance made by an officer of the Commonwealth, 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 Freedom of Information Act 1982

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

- (a) be in writing (email is sufficient);
- (b) state that the request is an application for the purposes of the FOI Act;
- (c) describe the documents you seek in enough detail to allow the decision-maker to identify and find them; and
- (d) provide an address for reply.

9.5 Obligations of the department in relation to confidentiality, privacy, secrecy 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 will adhere to the secrecy obligations set out in section 34ZS of the *Australia Security Intelligence Organisation Act 1979*, to the extent that those obligations apply in the circumstances.
- (3) 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.
- (4) 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.
- (5) Subsection (4) 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.
- (6) 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 Attorney-General's department received the application.