



Australian Government

Attorney-General's Department

PROGRAMME GUIDELINES FOR

Expensive Commonwealth Criminal Cases Fund

EFFECTIVE 6 MAY 2016—30 JUNE 2018



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Attorney-General's Department
3-5 National Cct
BARTON ACT 2600

Email: copyright@ag.gov.au

Contents

1.	Purpose	1
2.	Programme objectives	1
3.	Eligibility	1
	3.1 Who is eligible to apply	1
	3.2 Lodgement eligibility	1
	3.3 Eligible matters	1
4.	Assessment	2
5.	Scope of funding	2
6.	Application process	3
	6.1 Application dates	4
	6.2 Application requirements	4
	6.3 Grouping of matters	4
	6.4 How to submit an application	4
	6.5 Request for further information	4
	6.6 Decisions on applications	4
	6.7 Notice of decision	4
	6.8 Reporting information about successful applications	4
7.	Responsibilities	6
8.	Conflict of interest	6
9.	Funding	7
10.	Conditions of funding	7
	10.1 Contracting arrangements	7
	10.2 Taxation	7
	10.3 Payment arrangements	7
	10.4 Reporting requirements	7
	10.5 Evaluation	7
11.	Probity	8
12.	Privacy	8
13.	Record keeping	8
14.	Enquiries and feedback	8
15.	Complaints mechanism	9

1. Purpose

- 1) The purpose of the Expensive Commonwealth Criminal Cases Fund (ECCCF) is to reimburse legal aid commissions for costs incurred defending clients in serious, high cost, Commonwealth criminal matters (such as drug importation, people smuggling, terrorism, fraud and slavery).

2. Programme objectives

- 1) To ensure that legal aid commissions have sufficient resources to provide a legal defence for people charged with serious Commonwealth criminal offences who cannot afford private legal representation.
- 2) To prevent the need for legal aid commissions to reallocate funding away from other Commonwealth service priorities, such as family law matters, to meet the cost of expensive Commonwealth criminal law matters.
- 3) To prevent Commonwealth criminal law proceedings from being adjourned, postponed, or stayed in accordance with the principle established by the High Court's decision in *Dietrich v The Queen* (1992) 177 CLR 292 due to a lack of legal representation for an indigent accused.

3. Eligibility

3.1 Who is eligible to apply

- 1) Only legal aid commissions can apply for reimbursement under the ECCCF.
- 2) A legal aid commission is a statutory body established pursuant to legislation in the relevant state or territory to provide legal aid services.

3.2 Lodgement eligibility

- 1) Applications may be lodged before the commencement of criminal law proceedings, or at any time during proceedings.
- 2) Applications may also be lodged after proceedings have been finalised.
- 3) Applications will not be accepted if more than six months have passed since the conclusion of the matter, unless the decision-maker accepts that there is a reasonable explanation for the delay in lodging the application.
- 4) Reimbursement may be sought for expenses incurred prior to the date that an application is lodged.

3.3 Eligible matters

- 1) Applications for reimbursement under the ECCCF will only be accepted if:
 - a) the amount sought relates to Commonwealth criminal law proceedings, and
 - b) the cost, or estimated cost, exceeds \$40 000.
- 2) Reimbursement for the cost of appeals will only be considered in cases where counsel (other than counsel who appeared at the trial) certifies that there are reasonable prospects of success. This does not apply to appeals brought by the Commonwealth Director of Public Prosecutions.

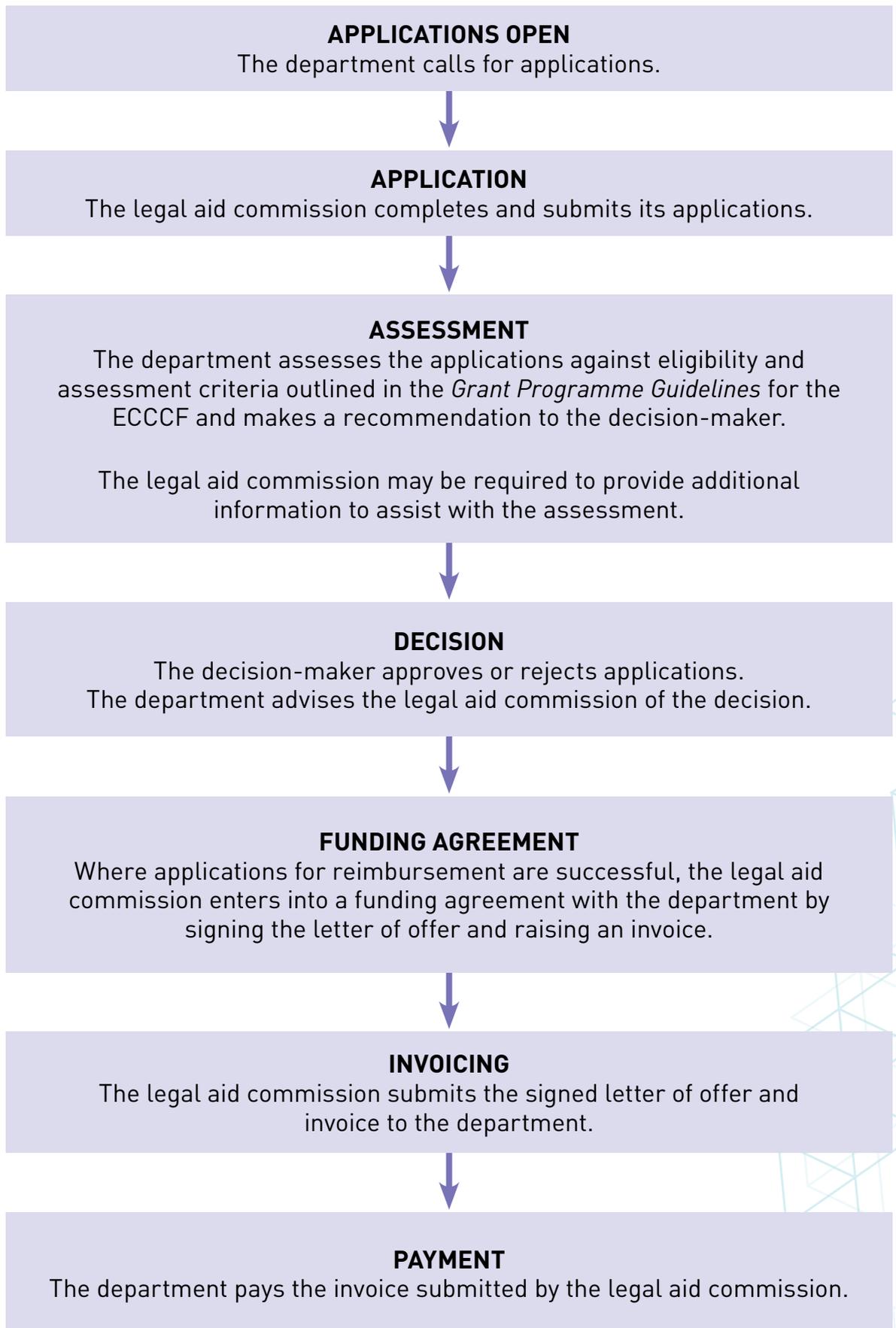
4. Assessment

- 1) Programme officers assess the appropriateness of reimbursement against the criteria in these guidelines and provide a recommendation in the form of a detailed decision note to the delegate for approval.
- 2) If an application for reimbursement does not meet the eligibility requirements set out in part 3 of these guidelines, the department will refuse the application without any further assessment.
- 3) The department will assess, using information provided in the application for reimbursement form, whether approval of the application is consistent with the purpose and programme objectives of the ECCCCF set out in these guidelines.
- 4) The department will also assess, using information provided in the application for reimbursement form, if the costs sought are reasonable on the basis of the following criteria:
 - a) Whether the applicant has taken, or will take, all reasonable steps within their control to contain the cost of the proceedings.
 - b) Whether the applicant has made a reasonable estimate of likely expenditure using available information about the likely direction and length of proceedings.

5. Scope of funding

- 1) Reimbursement will not be provided for:
 - a) matters where costs have been awarded in favour of the defendant, or
 - b) matters where costs could be sought under the *Proceeds of Crime Act 2002* (Cth).
- 2) Where a matter has previously received reimbursement from the ECCCCF, the amount to be considered for reimbursement will be the amount expended since the last application for that matter.
- 3) The decision-maker may approve reimbursement of all or part of the costs incurred by an applicant in providing legal assistance in a serious, high cost Commonwealth criminal matter.
- 4) In the event that there are insufficient funds remaining in the ECCCCF to meet all applications for reimbursement, the department may allocate to each applicant a proportion of the amount sought. After consideration of eligibility and the assessment criteria, the department will also consider the following factors:
 - a) the amount already reimbursed from the ECCCCF to each applicant within the same financial year,
 - b) the amount sought by each applicant relative to the amount of legal assistance funding they receive under the *National Partnership Agreement on Legal Assistance Services*, and
 - c) the impact that non-approval of the reimbursement will have on the applicant's ability to provide legal assistance for other Commonwealth legal assistance service priorities, such as complex family law matters that fall within priorities as specified in the *National Partnership Agreement on Legal Assistance Services (2015-20)*, within the same financial year.

6. Application process



6.1 Application dates

- 1) There will be three funding rounds each financial year.
- 2) The department will ordinarily request that applications be submitted by:
 - a) 30 April,
 - b) 31 August, and
 - c) 30 November.
- 3) Applications received by the department after the requested date will not be considered until the next funding round.

6.2 Application requirements

- 1) Applications must be:
 - a) submitted on the application forms provided by the department,
 - b) completed in full, and
 - c) signed by the Director / Chief Executive Officer of the legal aid commission making the application.

6.3 Grouping of matters

- 1) To support the efficient running of matters being managed together by the Commonwealth Director of Public Prosecutions, legal aid commissions and the courts, applications may be submitted that cover costs for the representation of a group of clients or proceedings.
- 2) The Attorney-General's Department has the discretion to determine whether or not the grouping of matters into a single application is appropriate.
- 3) Circumstances where the department may consider it appropriate for matters to be grouped include where:
 - a) the clients are co-accused or co-defendants,
 - b) the clients are being prosecuted as part of the same criminal trial,
 - c) the clients' matters are being run together, or
 - d) a combination of the above.
- 4) A separate application must be submitted for each separate group of matters.

6.4 How to submit an application

- 1) Applications should be submitted by email to ecccf@ag.gov.au.
- 2) Where necessary, the department will accept applications by mail.

The department's contact details are as follows:

Assistant Secretary
Legal Assistance Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

- 3) Faxed applications will not be accepted.

6.5 Request for further information

- 1) The department may, by notice in writing, ask an applicant to provide additional information to assist with the assessment of an application.
- 2) If the information is not provided within the time specified, the department may refuse to assess the application without further consideration.

6.6 Decisions on applications

- 1) ECCCCF applications will be approved by an officer within the department (the decision maker), in accordance with that officer's financial delegation limits.
- 2) Approval to reimburse an application, in full or part, is entirely at the discretion of the decision maker.
- 3) When making a decision on an application, the decision-maker will consider:
 - a) the information provided in the application against the requirements in the guidelines (including eligibility and assessment criteria),
 - b) whether any specific requirements will need to be imposed as a condition of funding, and
 - c) whether the application represents a proper use and management of relevant money, as required by the *Public Governance, Performance and Accountability Act 2013* and the Commonwealth Grants Rules and Guidelines.

6.7 Notice of decision

- 1) Applicants will be advised by letter and/or email of the outcome of applications within 28 days, where practicable, on receipt of all information required.
- 2) Advice to successful applicants may contain specific conditions attached to the funding.

6.8 Reporting information about successful applications

- 1) Under Commonwealth grants legislation, unless an exemption is granted, the Attorney-General's Department is required to publish information about individual funding arrangements through the grants register on the department's website. The department will report details of all grant payments to the Australian Taxation Office in accordance with the applicable legislation.

7. Responsibilities

- 1) Applicants have the following responsibilities:
 - a) to give honest and accurate information in an application and to the department when required, and
 - b) to tell the department if the circumstances of the applicant change before the department makes a decision on the application, if the change may affect the application.
- 2) If an applicant does not adhere to the above responsibilities, the department may refuse to consider an application.
- 3) An applicant's participation in any stage of the ECCCCF application process, or in relation to any matter concerning the process, is at the applicant's sole risk, cost and expense. The department will not be responsible for any costs or expenses incurred by an applicant in preparing or lodging an application or in taking part in the process.
- 4) The department will not accept responsibility for any misunderstanding arising from the failure by an applicant to comply with these guidelines or arising from any discrepancies, ambiguities, inconsistencies or errors in an application.

8. Conflict of interest

- 1) Applicants must declare any existing conflicts of interest, or that to the best of their knowledge there is no conflict of interest, that would impact on or prevent an applicant from fulfilling the requirements contained within a funding agreement.
- 2) A conflict of interest may exist, for example, if the applicant or any of its personnel:
 - a) has a relationship (whether professional, commercial or personal) with a party who is able to influence the application appraisal process, such as a department staff member,
 - b) has a relationship with, or interest in, an organisation, which is likely to interfere with or restrict the applicant in carrying out the proposed activities fairly and independently, or
 - c) has a relationship with, or interest in, an organisation from which they will receive personal gain as a result of the granting of funding under the ECCCCF programme.
- 3) Where an applicant identifies a conflict of interest, the application should clearly demonstrate how the conflict will be managed and any related issues.
- 4) Where an applicant subsequently identifies that an actual, apparent or potential conflict of interest exists or might arise in relation to an application, the applicant must inform the department in writing immediately.
- 5) All departmental personnel involved in the assessment of applications are required to declare whether they have a real or perceived conflict of interest. Where conflicts do arise they will be managed according to the Attorney-General's Department's Guidelines for Managing Conflicts of Interest.
- 6) Applicants may raise any concerns they have regarding conflicts of interest by emailing the department through ecccf@ag.gov.au or to request the department's guidelines.

9. Funding

- 1) The total core funding available for the ECCCCF in 2015 16 is approximately \$3.8 million.
- 2) Future Budget allocations are \$4.6 million for 2016 17 and \$3.7 million for 2017 18.

These are subject to change, based on funding allocations to the ECCCCF appropriated by Government in the Budget.

10. Conditions of funding

10.1 Contracting arrangements

- 1) Successful applicants will be required to enter into a funding agreement with the Commonwealth of Australia, represented by the department.
- 2) A template of the standard funding agreement will be provided by the department.

10.2 Taxation

- 1) Grant payments will be exclusive of GST.
- 2) The department reports details of all grant payments to the Australian Tax Office.

10.3 Payment arrangements

- 1) Before any payment can be made, funding recipients will be required to provide:
 - a) an invoice for the amount of the payment, and
 - b) evidence of meeting any specific conditions stipulated in the funding agreement.

10.4 Reporting requirements

- 1) Funding recipients may be required to provide reports to the department, as stipulated in the funding agreement.

10.5 Evaluation

- 1) The department may carry out evaluations, from time to time, to determine the effectiveness of grant activities in contributing to government objectives. Funding recipients may be required to provide information to assist in such evaluations.

11. Probity

- 1) The Australian Government is committed to ensuring that the process for providing reimbursements under the ECCCF is transparent and undertaken in accordance with published.
- 2) Grant programme guidelines may be varied from time to time by the Australian Government, as the needs of the programme dictate. Amended grant programme guidelines will be distributed to stakeholders in advance of their publication on the department's website.

12. Privacy

- 1) Any personal information collected by the department is protected by the *Privacy Act 1988 (Cth)*. Generally, the department collects personal information to carry out its functions properly and efficiently, and only uses personal information for the purposes for which it was given to the department and for directly related purposes (unless otherwise required by, or authorised under, law).

13. Record keeping

- 1) Applicants should comply with relevant record keeping legislation within their jurisdiction and maintain normal business records of materials used to support applications to the ECCCF, including evidence of expenditure, for a period of up to 5 years.

14. Enquiries and feedback

- 1) Applicants should direct any enquiries and requests for feedback to:
Assistant Secretary
Legal Assistance Branch
Attorney-General's Department
3-5 National Cct
BARTON ACT 2600
E mail: ecccf@ag.gov.au

15. Complaints mechanism

- 1) The department regards complaints as a way of both assessing and improving its performance. The department will endeavour, where possible, to ensure that complaints are resolved promptly, fairly, confidentially and satisfactorily and that processes are reviewed as a result.
- 2) If an applicant considers that a matter has not been resolved satisfactorily, they may submit a complaint by using our online enquiries, feedback and complaints form or by contacting the Complaints Handling Area.

Telephone: (02) 6141 3001

Complaints form: <https://www.ag.gov.au/About/Pages/Contactus.aspx>

