

## ***Commonwealth Guidelines for Legal Financial Assistance 2012:***

### **Addendum for the Royal Commission into Aged Care Quality and Safety**

Paragraph 3.5(d) of the *Commonwealth Guidelines for Financial Assistance 2012* (the Guidelines) establishes the Royal Commission and Inquiries scheme. This addendum modifies the operation of the Guidelines with regard to applications for legal financial assistance in relation to the Royal Commission into Aged Care Quality and Safety (the Royal Commission).

This addendum prevails to the extent of any inconsistency with the Guidelines. It includes specific guidance on eligibility of witnesses.

#### **Who can get a grant?**

The section below replaces Section 4.1 of the Guidelines.

Legal financial assistance may be provided to an entity, as defined below, for their reasonable legal representation and disbursement costs resulting from:

- being called, or granted leave to appear, as a witness at a hearing of the Royal Commission, or
- being requested to attend or attending an interview of the Royal Commission, or
- being requested to provide a written statement that will be used as evidence of the Royal Commission, and/or
- complying with a notice to produce issued by the Royal Commission, and
- where the entity, excluding an individual, would not be able to meet these costs without incurring serious financial hardship.

The Attorney-General's Department may seek the advice of the Office of the Royal Commission into Aged Care Quality and Safety to determine whether an entity is eligible.

#### ***Definition of an entity***

For the purposes of this addendum, 'entity' is as defined in Section 2.1 of the Guidelines.

For certainty, 'entity' includes a person who is an employee or former employee of any 'aged care service' defined in the Letters Patent issued on 8 October 2018 who is not representing that entity.

#### **Legal representation**

Paragraph 5.16(b) of the Guidelines does not apply to entities seeking legal financial assistance in relation to the Royal Commission. Entities seeking legal financial assistance for the Royal Commission may be represented by a Commonwealth-funded legal assistance provider.

#### **Application for a grant**

An application for legal financial assistance must be submitted each time an entity:

- receives a summons or leave to appear as a witness at a hearing of the Royal Commission, or
- is requested to attend an interview of the Royal Commission, or
- is requested to provide a written statement by the Royal Commission, or
- is issued with a notice to produce by the Royal Commission.

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

In addition to the factors set out in Section 5.1(2) of the Guidelines, a decision-maker must have regard to the total funds available for all grants under the appropriation for financial assistance towards legal costs and related expenses for witnesses to the Royal Commission.

An application for assistance from an individual is exempt from the consideration of financial circumstances as set out in Section 5.8(2) of the Guidelines.

For entities other than an individuals, a decision-maker must have regard to the financial circumstances set out in Section 5.8(2) and the additional considerations set out in Section 5.10 of the Guidelines.

A decision-maker will also have regard to the likely costs of the applicant's legal representation and disbursements.

An application for legal financial assistance may be refused if the entity has received, or may receive, funding or legal assistance in connection with the Royal Commission other than under this scheme.

### **Notice of decision**

In relation to an application for legal financial assistance, the decision-maker must, within 21 days of receiving a complete application, provide a decision on the application to the applicant, or the entity that applied on behalf of the applicant.

### **Financial assistance available under grants**

Subject to the following specific terms, the amount for financial assistance available under a grant will be assessed in accordance with the rates payable under the *Commonwealth Legal Financial Assistance Schemes Assessment of Costs July 2012* (costs document).

#### *Notices to Produce*

Costs incurred in complying with a notice to produce may be assessed on the basis of actual or agreed costs, rather than the hourly rate provided for solicitors or counsel in the costs document.

#### *Top-up payments*

An entity who receives a grant of legal financial assistance is not permitted to pay, or agree to pay, their legal representative/s more than the amount of funding received for work covered by the grant, unless specified in the terms of the grant offers.