

# Commonwealth priorities and eligibility principles

## NATIONAL PARTNERSHIP AGREEMENT ON LEGAL ASSISTANCE SERVICES

This schedule provides guidance on the prioritisation of legal assistance services delivered by legal aid commissions and community legal centres.

### PRIORITY CLIENTS

- B1 The legal assistance priority client groups recognise people whose capability to resolve legal problems may be compromised by circumstances of vulnerability and/or disadvantage. People who fall within the priority client groups are more likely to experience legal problems, less likely to seek assistance and/or less able to access services for a range of reasons.
- B2 Legal assistance service providers should focus their services on people experiencing financial disadvantage.
- B3 Where appropriate, legal assistance service providers should also plan and target their services to people who fall within one or more of the priority client groups (in alphabetical order):
- (a) children and young people (up to 24 years);
  - (b) Indigenous Australians;
  - (c) older people (aged over 65 years);
  - (d) people experiencing, or at risk of, family violence;
  - (e) people experiencing, or at risk of, homelessness;
  - (f) people in custody and prisoners;
  - (g) people residing in rural or remote areas;
  - (h) people who are culturally and linguistically diverse;
  - (i) people with a disability or mental illness;
  - (j) people with low education levels; and
  - (k) single parents.
- B4 The list of priority client groups is for guidance only and is not exhaustive. Service providers are not excluded from assisting clients that fall outside these groups.

## COMMONWEALTH SERVICE PRIORITIES

- B5 The use of Commonwealth funding provided under this Agreement by legal aid commissions and community legal centres should be broadly consistent with the principles and service priorities set out in this Schedule, where applicable.

### General principles

- B6 Commonwealth funding should be directed to the delivery of front-line services and focused on meeting the legal needs of priority clients.
- B7 Commonwealth funding should not be used to lobby governments or to engage in public campaigns. Lobbying does not include community legal education or where a legal assistance service provider makes a submission to a government or parliamentary body to provide factual information and/or advice with a focus on systemic issues affecting access to justice.
- B8 Legal assistance service providers should deliver timely intervention services to resolve clients' legal problems sooner, or prevent them from arising altogether.
- B9 Family or civil law disputes should be resolved through alternative dispute resolution processes rather than through litigation, where appropriate.
- B10 Legal assistance service providers should consider whether other services (legal as well as non-legal) may be relevant to a client's needs and make referrals to these services where appropriate. Suitable collaborative arrangements should be established for this purpose.

### Family law priorities

- B11 Family law services should focus on:
- (a) matters involving allegations of family violence;
  - (b) matters where the safety or welfare of children are at risk;
  - (c) matters involving complex issues about the living arrangements, relationships and financial support of children; and
  - (d) assisting people with property settlement matters if they are experiencing financial disadvantage or are at risk of homelessness.
- B12 For legal aid commissions, the representation of children in family law proceedings and family dispute resolution processes should also be a focus.

### Civil law priorities

- B13 Legal assistance service providers should focus on assisting people with civil law problems that are likely to have a significant adverse impact if not resolved. For example, where there are implications for a person's safety, health and wellbeing, access to government benefits and pensions, or homelessness status.
- B14 Key Commonwealth civil law areas are listed below (in alphabetical order):
- (a) bankruptcy matters;
  - (b) consumer law matters;
  - (c) employment matters;

- (d) extradition matters;
- (e) human rights and anti-discrimination matters;
- (f) insurance law matters;
- (g) migration matters; and
- (h) social security law matters (including matters relating to military entitlements and military compensation claims).

B15 The list of Commonwealth civil law areas is for guidance only. Legal assistance service providers should consider how to best meet civil law need collectively (arising from Commonwealth or State laws), within available resources.

B16 Legal assistance service providers should respond collectively to emerging civil law issues identified through service planning, such as providing legal help for victims of natural disasters.

### Commonwealth criminal law priorities

B17 Commonwealth criminal law services should focus on:

- (a) matters where the defendant is a child;
- (b) matters where the defendant is being charged with a criminal offence for which a sentence of imprisonment is likely to apply should the defendant be found guilty; and
- (c) assisting persons being detained in custody.

## COMMONWEALTH ELIGIBILITY PRINCIPLES

B18 This section sets out the Commonwealth's directions for assessing the financial eligibility of applicants for Commonwealth-funded representation services.

B19 Legal assistance service providers should consider the financial status of prospective clients when providing representation services to ensure that intensive services are provided to financially disadvantaged clients.

B20 Legal assistance service providers may seek client contributions to improve their financial sustainability and to fund additional front-line services.

B21 Applicants should be exempt from legal aid commission means tests when seeking the merits review of decisions about eligibility for Commonwealth military entitlements or military compensation payments.

B22 In assessing an applicant's eligibility, legal aid commissions should disregard any of a person's property that is subject to a restraining order or confiscation order under the *Proceeds of Crime Act 2002* (Cth) or is likely to be covered by such an order.

## Legal aid commission means tests

B23 Legal aid commissions apply a means test to determine the financial eligibility of applicants. The key features of this means test are set out below.

### Income test

B24 The income test will generally be satisfied where an applicant is in receipt of Centrelink benefits as their main source of income.

B25 The test may also be satisfied if the applicant's income is below an eligibility threshold after deductions are made for income tax, housing costs and support provided to dependents. The Commonwealth's preference is for income thresholds to be referable to an established measure of disadvantage, such as the Henderson Poverty Line.

B26 It is at the discretion of legal aid commissions to set thresholds for financial eligibility.

### Assets test

B27 The assets test will generally be satisfied if the total value of an applicant's assets is below an eligibility threshold. Exemptions are made for allowable assets, which include an amount of equity in the applicant's principal place of residence, a motor vehicle, tools of the trade and household goods.

B28 It is at the discretion of legal aid commissions to set the eligibility threshold and exemptions for allowable assets.

### Client contributions

B29 Where an applicant's income or assets are above the eligibility threshold, legal aid may still be granted with contributions from the applicant based on their financial capacity and/or the estimated cost of the legal matter.

### General discretion

B30 Legal aid commissions may exercise discretion in special circumstances to grant legal aid to a person who does not satisfy its means test.