



CIVIL LITIGATION ASSISTANCE SCHEME

CONDITIONS OF ASSISTANCE

APPLICATION

1. Applications for funding under the Civil Litigation Assistance Scheme can only be submitted through a private legal practitioner holding a current practicing certificate in Western Australia who is willing to act for the applicant in accordance with the Civil Litigation Assistance Scheme Conditions of Assistance (CLAS Conditions).
2. All the information and documents required must be provided to the Administrator with the application and upon request by the Administrator.
3. Applications will not be accepted directly from members of the public.
4. Legal assistance will only be granted, subject to the CLAS Conditions, where the Administrator determines that there are sufficient funds available under the Civil Litigation Assistance Scheme to underwrite the costs and anticipated costs associated with the legal proceedings the subject of the application.
5. Legal assistance will only be granted:
 - to a plaintiff or proposed plaintiff in court proceedings;
 - to “natural persons” who reside permanently in Western Australia;
 - where the cause of action arose in Western Australia; and
 - where the original proceedings were or will be commenced in Western Australia.
6. The Civil Litigation Assistance Scheme does not cover any legal costs and disbursements incurred by the applicant in making the application nor for the cost of supplying material supporting the application.
7. The Civil Litigation Assistance Scheme may fund civil litigation matters including (but not limited to) personal injury claims, medical negligence, public liability, dependency/inheritance claims, breach of contract issues and insurance matters. The Civil Litigation Assistance Scheme will not fund family or criminal law matters, immigration cases, commercial disputes, defamation cases, environmental matters, prerogative writs and workers compensation matters.

ASSESSMENT

8. The “applicant” is the person seeking funding for legal assistance.
9. The “Administrator” is the delegate of the Director of Legal Aid with the responsibility of managing the Civil Litigation Assistance Scheme.
10. The Administrator may request further information from the applicant and applicant’s legal practitioner.
11. The Director of Legal Aid will make a decision to approve or refuse an application for funding.
12. The Director of Legal Aid may consult with any member of the CLAS Advisory Panel in making a decision.
13. The CLAS Advisory Panel consists of members of the private legal profession with significant civil litigation experience.
14. The Administrator shall advise the applicant’s legal practitioner of the decision as soon as practicable after the decision is made.
15. If it appears to the Administrator that the applicant may be eligible for legal aid under the current State or Commonwealth Guidelines, then the Administrator may recommend refusing the application for assistance from the Civil Litigation Assistance Scheme, or may postpone consideration of that application pending the outcome of the application for a grant of legal aid under those Guidelines.

Means Test

16. Assistance may only be granted to an applicant who is unable to reasonably meet the expected cost of proposed or actual litigation from the income and assets available to the applicant. Applicants who have a gross family income of under \$80,000 per annum and own assets such as a house or car of reasonable value will ordinarily qualify for funding.
17. The Administrator may at any time require the applicant and/or his or her legal practitioner to provide to the Administrator any information or documents concerning the financial circumstances of the applicant and any financially associated person.
18. An applicant must disclose to the Administrator the full financial circumstances of the applicant and any financially associated person, including information on any involvement in family trusts or businesses. If assistance is granted, the applicant shall promptly disclose to the Administrator any significant variations in the applicant and any financially associated person’s financial circumstances.
19. If further financial information is required from a third party about the applicant’s financial circumstances, the applicant shall authorise that third party to disclose the information to the Administrator.

Merits Test

20. In determining whether or not to grant aid in a particular matter, the following will be considered:
- (a) The funds available under the Civil Litigation Assistance Scheme;
 - (b) The likelihood of the matter succeeding having regard to:
 - i. *the strength of the claim;*
 - ii. *any legal or factual difficulties;*
 - iii. *the documentary evidence available to support the case;*
 - iv. *witness statements/ affidavits;*
 - v. *expert evidence.*
 - (c) The cost of providing legal assistance under the Civil Litigation Assistance Scheme when weighed against the potential benefit or gain to the applicant;
 - (d) The ability of the defendant/s to pay the damages and costs awarded;
 - (e) Whether or not a person who is not legally aided would be advised to commence legal action; and
 - (f) Whether an ordinary prudent self-funding litigant would risk his or her own funds in similar proceedings.

Legal Assistance

21. Legal assistance shall only be granted in stages and funding for the additional stages will be dependent on the funds available, the continuing merit of the matter, financial eligibility, and a cost/benefit analysis.
22. The general stages of funding are:
- Advice, investigation, negotiations and reporting on the legal merit of the claims;
 - Commencement of court proceedings up to and including preparation and attendance at the first pre trial conference;
 - Preparation and attendance at mediation, if applicable;
 - Continued representation to second pre trial conference, if applicable;
 - Continued representation from pre trial conference up to and including trial.
23. A grant of legal assistance cannot be backdated for more than 30 days from the date of receipt of the application.

CONDITIONS AND COSTS

24. An “assisted person” is an applicant who is granted assistance under the Civil Litigation Assistance Scheme.

Conditional Fee

25. (a) The assisted person must agree to pay a Conditional Fee to the Legal Aid Commission.
- (b) If the assisted person is appointed as a next friend for a person under a legal disability he/she must make an application to the court at the commencement of

- proceedings for an order approving the funding agreement between the Legal Aid Commission and the next friend to ensure the Conditional Fee is paid from any settlement or judgment.
26. The Conditional Fee determined by the Director of Legal Aid is 20% of the judgment amount or settlement amount (not including special damages) received as a result of the assisted litigation. In exceptional circumstances the Director of Legal Aid may determine a Conditional Fee other than 20%.
 27. In the event that the successful litigation is not concluded with an award of monetary damages or a monetary judgment, then the value of the property so awarded to the assisted person shall be considered as if it were a monetary sum. The value of such property shall be the value as determined by the Court or Tribunal hearing the matter if the action proceeds to trial, the value as agreed between the litigants if the matter does not proceed to trial, or if otherwise undetermined, the value as reasonably determined by the Director of Legal Aid.
 28. The Conditional Fee shall be a first charge, enforceable by the Director of Legal Aid, on any amount or value of property recovered by the assisted person as a result of the assisted litigation, and the Conditional Fee shall be paid to the Legal Aid Commission as soon as practicable.

Costs

Solicitor costs and disbursements

29. The Legal Aid Commission shall pay the assisted person's legal costs and disbursements in the sum allocated for a particular stage of matter as stipulated in the grant of assistance letter pursuant to the Civil Litigation Assistance Scheme. Legal practitioner's costs will be paid at the hourly rate as provided by the Supreme Court Scale of Costs.
30. Court filing fees will not be paid unless the court has refused a deferral or waiver of court filing fees.
31. The approval of the Administrator must be obtained before the legal practitioner incurs any single disbursement, which exceeds the sum of \$500 (or such other sum as shall be determined by the Administrator) unless legal assistance has already been approved for the specific disbursement.
32. A tax invoice is to be submitted to the Legal Aid Commission by the legal practitioner.

Recovered costs

33. Party/party costs and Goods and Services Tax (GST) recovered by the assisted person or the assisted person's legal practitioner with respect to work done under a grant of assistance shall be paid to the Legal Aid Commission within 14 days from the date it is received by the legal practitioner.

Adverse costs

34. In the event that the assisted person's claim is not successful, then the party/party costs awarded against the assisted person may be borne by the assisted person and not be paid pursuant to the Civil Litigation Assistance Scheme. The Legal Aid Commission may pay party/party costs at its discretion.

EXTENSION, VARIATION AND TERMINATION OF ASSISTANCE

35. The assigned legal practitioner must seek an extension of legal assistance to progress to the next stage of the proceedings. The legal practitioner must provide a report to the Administrator, outlining:

- The stage the matter has reached;
- Details of the basis upon which the matter is being defended;
- His/her opinion why the plaintiff is likely to succeed;
- Any further evidence which is required to successfully prosecute the claim;
- Any other details which may affect the likely success of the claim;
- The approximate cost of the next stage of the claim by reference to time (number of hours) to complete the work.

36. The Administrator shall advise the legal practitioner and the assisted person of the decision as soon as practicable after the decision is made.

37. The Director of Legal Aid may, by notice to the legal practitioner and the assisted person, at any time after the approval of an application for assistance, vary, suspend or terminate such assistance for any reason including:

- The information provided by the assisted person or the legal practitioner to the Administrator is materially inaccurate;
- Any significant change in the assisted person's prospects of success in the litigation;
- A change in financial circumstances of the assisted person;
- The full cost of providing assistance is not justified when weighed against any likely gain or benefit;
- The Administrator considers that the solvency of the Civil Litigation Assistance Scheme is threatened by the continuing grant or extension of the assistance;
- The assisted person has unreasonably refused to follow advice from the legal practitioner and/or the Administrator;
- Failure by the assisted person or legal practitioner to report adequately to the Administrator upon request;
- A failure by the assisted person or legal practitioner to comply with any of the CLAS Conditions or any request or direction by the Administrator;
- Any other good cause.

38. Subject to the above, the Administrator shall supply upon request by the assisted person and the legal practitioner the reasons for such variation, extension, suspension or cancellation.

39. (a) An assisted person may terminate the grant of legal assistance at any time but, subject to any waiver by the Administrator, the Conditional Fee and/or all or part of the amount paid or payable under the Civil Litigation Assistance Scheme to or on behalf of the assisted person before the termination, shall continue to be payable pursuant to the CLAS Conditions.

(b) In the preceding clause, termination of the grant of legal assistance includes but is not limited to the following:

- (i) abandonment of a claim or proposed claim by the assisted person;
- (ii) discontinuance of a claim or proposed claim by the assisted person; or
- (iii) situations where the claim is struck out for want of prosecution

40. The legal practitioner shall advise the Administrator if the legal practitioner ceases to practice or is unable to continue to represent the assisted person.

REPORTING TO THE ADMINISTRATOR

41. The legal practitioner shall inform the Administrator of all Court and informal conference appointments promptly upon the dates being set.

42. The legal practitioner shall inform the Administrator of any matters that come to his or her attention that changes his/her original opinion in relation to liability or quantum.

43. The legal practitioner shall inform the Administrator forthwith of all offers and counter offers made to settle the matter and provide their views on the appropriateness of the offer/s.

44. The Administrator may require a report from the legal practitioner acting for the assisted person at any time regarding any matter connected with the assisted litigation and the financial circumstances of the assisted person and such report shall be provided to the Administrator upon request within a reasonable time.

45. The assisted person shall authorise and direct the legal practitioner to provide to the Administrator any information or documents required by the Administrator.

MISCELLANEOUS

46. The Legal Aid Commission may at any time amend the CLAS Conditions.

47. The Legal Aid Commission may at any time review the operation of the Civil Litigation Assistance Scheme.