



LEGAL AID
WESTERN AUSTRALIA

Chapter 6B
STATE ELIGIBILITY
GUIDELINES

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TABLE OF CONTENTS

GENERAL.....3

PROVISION OF LEGAL ASSISTANCE3

GENERAL GUIDELINES FOR ASSESSING APPLICATIONS AND REQUESTS FOR EXTENSIONS OF AID4

TEST CASES.....5

CHILDREN.....5

CRIMINAL LAW MATTERS5

CHILDREN’S COURT.....5

MAGISTRATES COURT6

SUPREME COURT BAIL APPLICATIONS11

INQUESTS11

APPEALS.....11

SUPERIOR COURT PLEA.....12

SUPERIOR COURT TRIALS.....12

PROCEEDS OF CRIME.....12

PRIVATE CRIMINAL PROSECUTIONS12

FAMILY LAW MATTERS13

FAMILY CONFERENCING13

DE FACTO PROPERTY SETTLEMENT.....13

PROTECTION APPLICATIONS13

CIVIL LAW MATTERS15

MINOR CIVIL MATTERS15

PERSONAL INJURIES COMPENSATION CLAIMS15

INITIAL LIMITATION OF GRANT OF AID.....15

SPECIFIC CIVIL LAW MATTERS16

RESTRAINING ORDERS.....16

CRIMINAL INJURIES COMPENSATION CLAIMS.....16

UNFAIR DISMISSAL CLAIMS OR DISPUTES CONCERNING EMPLOYMENT CONTRACTS.....17

MOTOR VEHICLE PROPERTY DAMAGE CLAIMS.....17

CLASS OR REPRESENTATIVE ACTION.....17

ROYAL COMMISSIONS.....17

HIGH COURT APPEALS17

JUDICIAL REVIEW.....17



GENERAL

1. In respect of any application for legal aid the assessing officer shall first give consideration as to whether the matter could be adequately dealt with by non-litigation services, either within Legal Aid Western Australia (LAWA) or externally. Aid shall only be granted in circumstances where the assessing officer considers that the matter cannot be adequately dealt with by reference to non-litigation strategies.
2. LAWA recognises that all classes of legal matters have an inherent and intrinsic importance to the individual. LAWA will, where possible and appropriate, give priority to the following classes of matters:
 - 2.1 Where there is a reasonable chance that the applicant will lose his or her liberty as a result of being charged with a serious criminal offence.
 - 2.2 Where a child is at risk of physical sexual or emotional abuse or where the conduct of either or both of the parents or some other person having significant contact with the child is alleged to be anti-social to the extent that it seriously impinges on the child's welfare.
 - 2.3 Where the applicant's case involves issues the legal resolution of which would address a point of law of public importance or affect a significant number of people.

PROVISION OF LEGAL ASSISTANCE

3. Having regard to resources in a locality available, LAWA provides information, advice and assistance to the extent reasonably required to resolve the legal issue confronting the individual.
4. In assessing an application for aid consideration must be given to the disadvantage an applicant for aid may suffer because of remoteness of location. A grant of legal aid may be made where funds are available. In particular consideration must be given to:
 - 4.1 The services available in the community.
 - 4.2 Any financial hardship in accessing non-litigation services.
 - 4.3 Cost of living and relative income.
 - 4.4 Cost of private representation in a locality.
 - 4.5 The availability of staff practitioners in a locality.



GENERAL GUIDELINES FOR ASSESSING APPLICATIONS AND REQUESTS FOR EXTENSIONS OF AID

5. Legal aid may be made available to any applicant provided:
 - 5.1 The applicant cannot otherwise afford the full cost of obtaining the legal service required from a solicitor, and
 - 5.2 It is reasonable in all the circumstances to provide assistance to pursue a legal remedy.
6. In deciding whether it is reasonable to provide assistance, Legal Aid has regard to:
 - 6.1 The existence or otherwise of reasonable alternative services which could adequately resolve the matters in issue.
 - 6.2 Steps taken by the applicant to resolve the issue without recourse to legal proceedings.
 - 6.3 Whether the matter relates to a problem the solution of which may be achieved in the field of normal legal practice.
 - 6.4 Whether the applicant will obtain a practical or material benefit or gain or suffer a practical or material detriment or loss.
 - 6.5 Whether the cost to the legal aid fund can be justified having regard to:
 - 6.5.1 The benefit or gain likely to accrue to the applicant;
 - 6.5.2 The detriment or loss likely to accrue to the applicant;
 - 6.5.3 The number, nature and relative merits of other applicants for legal aid, whether made or reasonably expected to be made.
 - 6.6 Whether the proceedings are likely to be determined in a manner favourable to the person.
 - 6.7 Whether a person who is not legally aided would be advised to take or defend the proceedings.
 - 6.8 The nature and extent of the benefit or detriment to the public or any section of the public should legal assistance not be provided.
 - 6.9 The availability of resources to the Commission for the provision of legal assistance.
7. Aid should never be made available in circumstances where the applicant refuses to follow the reasonable advice of his or her solicitor.
8. In circumstances where a grant of aid is in existence and the applicant has refused to follow the reasonable advice of his or her solicitor then aid should be terminated.



TEST CASES

- 9.1 Aid for test cases may be granted provided the applicant's case involves issues the legal resolution of which would address a point of law of public importance or affect a significant number of people.
- 9.2 In the circumstances that a matter for which an applicant has applied for a grant of aid does not otherwise fall within criteria set out in these guidelines aid may be granted on the basis that the matter qualifies as a test case. A test case is a matter with impact beyond the particular individual assisted and may have a broad benefit for disadvantaged people. As such, it has the potential to save the Legal Aid Fund future expense. The following criteria are used to identify test cases:
- 9.2.1 The subject matter giving rise to the point of law in question meets normal guidelines; and
 - 9.2.2 A successful result will potentially have a beneficial effect on the legal rights of a significant portion of Legal Aid's priority clients; and
 - 9.2.3 The point of law in issue either is untested or inconclusively settled and potentially affects a significant number of Legal Aid's priority clients; and
 - 9.2.4 The point of law in issue must be a reasonably arguable point of law and not merely fanciful or frivolous; and
 - 9.2.5 The cost/benefit of the result makes it reasonable, in all the circumstances to fund the case.
- 9.3 Any matter arising under sub-paragraph 37(4)(c)(i) of the Legal Aid Commission Act and which is likely to cost over \$10,000 shall be referred to the Commission for direction pursuant to sub-section 37(4a).

CHILDREN

10. Subject to the guidelines relating to financial eligibility, an application for aid from a person with respect to a non-criminal matter under the age of 18 shall be assessed in accordance with these guidelines as if that applicant were not under the age of 18 years old.

CRIMINAL LAW MATTERS

CHILDREN'S COURT

11. Subject to the guidelines relating to financial eligibility aid may be granted to a person under the age of 18 years with respect to a criminal matter provided that:



- 11.1 The charges can only be dealt with on indictment or otherwise are of such a serious nature as to be heard before the President of the Children's Court; or
 - 11.2 The representation required is outside the normal level of representation that could be provided to the applicant through a duty lawyer service; and
 - 11.3 The applicant has at least one of the following special circumstances:
 - 11.3.1 a mental illness or impairment;
 - 11.3.2 an intellectual disability;
 - 11.3.3 a physical disability;
 - 11.3.4 a disadvantage due to location; or
 - 11.4 There is a reasonable likelihood that conviction will result in the applicant receiving a term of immediate imprisonment or detention.
 - 11.5 In circumstances where it is considered appropriate to grant aid on the sole basis that duty counsel cannot deal with the matter, aid may be directed to a staff practitioner.
12. Legal aid may be granted for trial where:
- 12.1 In matters not proceeding before the President of the Children's Court:
 - 12.1.1 there is a current grant for a plea on the charges; and
 - 12.1.2 there is a reasonable prospect of acquittal.
 - 12.2 The matter is proceeding before the President of the Children's Court.
13. Aid may be made available to an applicant for review, rehearing and appeal in relation to conviction and sentences of imprisonment, detention or conditional release order where it appears likely that the appellate court would interfere with the original decision in a way that substantially benefits the applicant.

MAGISTRATES COURT

PLEAS IN MITIGATION

14. Legal aid may be granted for a plea in mitigation in the Magistrates Court if the representation required is outside the scope of a duty lawyer service and there is either a special circumstance precluding self representation or a real likelihood of immediate imprisonment and the applicant is on specified orders, as set out below:
 - 14.1 **Outside the Scope of a Duty Lawyer Service**



The representation required is outside the scope of a duty lawyer service for at least one of the following reasons:

- 14.1.1 There are two or more prior convictions of a similar nature (excluding traffic convictions); or
- 14.1.2 The facts or charges are too complex; or
- 14.1.3 There are five or more charges (excluding traffic charges).

AND EITHER

14.2 Special Circumstances

The applicant has at least one of the following special circumstances:

14.2.1 A mental illness or mental impairment:

14.2.1.1 the applicant has a mental illness or mental impairment that affects their ability to communicate or their thought processes, to the extent that it precludes self-representation;

AND one of the following

14.2.1.2 is in receipt of a disability support pension; or

14.2.1.3 is currently receiving treatment or has a long standing history of treatment for a mental illness or mental impairment; or

14.2.1.4 has written confirmation from a doctor or service provider confirming that they have a mental illness or mental impairment;

14.2.1.5 is subject to a court imposed hospital order.

OR

14.2.2 An intellectual disability

14.2.2.1 the applicant has an intellectual disability that affects their ability to communicate or their thought processes, to the extent that it precludes self-representation;

AND one of the following:

14.2.2.2 is in receipt of a disability support pension; or

14.2.2.3 is registered with the Disability Services Commission; or

14.2.2.4 has written confirmation from a doctor or service provider confirming that they have an intellectual disability.

OR

14.2.3 A physical disability.



14.2.3.1 the applicant has a physical disability that affects their ability to communicate, even with an interpreter, to the extent that it precludes self-representation;

AND one of the following:

14.2.3.2 is in receipt of a disability support pension; or

14.2.3.3 is registered with the Disability Services Commission; or

14.2.3.4 has written confirmation from a doctor or service provider confirming that they have a physical disability.

OR

14.2.4 A first language other than English.

The applicant's ability to communicate is profoundly affected, even with an interpreter, to the extent that it precludes self-representation

OR

14.2.5 A disadvantage due to location because of the unavailability of legal aid services or other legal services at a location.

OR

14.3 Likelihood of Immediate Imprisonment and Applicant is on Specified Orders

A conviction on the current charge is likely to result in a term of immediate imprisonment and at the time of the offence the applicant was on:

14.3.1 a suspended imprisonment order (conditional or otherwise) imposed by the Magistrates Court and has a similar charge to the one for which the suspended imprisonment order was made;

14.3.2 parole, or an intensive supervision order or a suspended imprisonment order (conditional or otherwise) imposed by the Supreme Court, the District Court or the President of the Children's Court.

14.4 Aid may be granted for representation by a staff practitioner for a plea in mitigation if at least one of the following criteria are met:

above;

14.4.1 It is outside the scope of the duty lawyer service as defined in 14.1

or

14.4.2 There is a special circumstance as defined in 14.2 above; or

14.4.3 There is a real likelihood of immediate imprisonment.

TRIALS

15. Legal aid may be granted for representation at a Magistrates Court trial if there is legal merit and complexity and either a special circumstance precluding self-



representation or a real likelihood of immediate imprisonment and the applicant is on specified orders, as set out below:

15.1 Legal Merit

There is a reasonable prospect of an acquittal.

AND

15.2 Complexity

The case is complex for at least one of the following reasons:

- 15.2.1 A person qualified as an expert is required to give evidence; or
- 15.2.2 Three or more civilian witnesses are being called by one side; or
- 15.2.3 A child witness is being called to give evidence; or
- 15.2.4 There are significant issues surrounding the admissibility of evidence; or
- 15.2.5 The onus of proof is reversed; or
- 15.2.6 One or more co-accused are pleading not guilty; or
- 15.2.7 The accused, if unrepresented, will cross examine the complainant where the charge is one of violence or of a sexual nature; or
- 15.2.8 The case involves new or untested law; or
- 15.2.9 The case involves public interest considerations; or
- 15.2.10 Other reasons.

AND EITHER

15.3 Special Circumstances

The applicant has at least one of the following special circumstances:

- 15.3.1 A mental illness or impairment:
 - 15.3.1.1 the applicant has a mental illness or impairment that affects their ability to communicate or their thought processes, to the extent that it precludes self-representation;
- AND one of the following:
 - 15.3.1.2 is in receipt of a disability support pension; or
 - 15.3.1.3 is currently receiving treatment or has a long standing history of treatment for a mental illness or impairment; or
 - 15.3.1.4 has written confirmation from a doctor or service provider confirming that they have a mental illness or impairment; or
 - 15.3.1.5 is subject to a court imposed hospital order.



OR

15.3.2 An intellectual disability:

15.3.2.1 the applicant has an intellectual disability that affects their ability to communicate or their thought processes, to the extent that it precludes self-representation;

AND one of the following:

15.3.2.2 is in receipt of a disability support pension; or

15.3.2.3 is registered with the Disability Services Commission;

or

15.3.2.4 has written confirmation from a doctor or service provider confirming that they have an intellectual disability.

OR

15.3.3 A physical disability:

Physical disabilities include disorders of the musculoskeletal, circulatory and nervous systems and sensory disabilities involving impairments in hearing and vision.

15.3.3.1 the applicant has a physical disability that affects their ability to communicate, even with an interpreter, to the extent that it precludes self-representation;

AND one of the following

15.3.3.2 is in receipt of a disability support pension; or

15.3.3.3 is registered with the Disability Services Commission;

or

15.3.3.4 has written confirmation from a doctor or service provider confirming that they have a physical disability.

OR

15.3.4 A first language other than English:

The applicant's ability to communicate is profoundly affected, even with an interpreter, to the extent that it precludes self-representation.

OR

15.3.5 A disadvantage due to location because of the unavailability of legal aid services or other legal services at a location.

OR

15.4 Likelihood of Immediate Imprisonment and Applicant is on Specified Orders

A conviction on the current charge is likely to result in a term of immediate imprisonment and at the time of the offence the applicant was on:



15.4.1 a suspended imprisonment order (conditional or otherwise) imposed by the Magistrates Court and has a similar charge to the one for which the suspended imprisonment order was made;

OR

15.4.2 parole, or an intensive supervision order or a suspended imprisonment order (conditional or otherwise) imposed by the Supreme Court, the District Court or the President of the Children's Court.

15.5 Aid may be granted for representation by a staff practitioner at a trial where there is a reasonable prospect of an acquittal and at least one of the following criteria are met:

15.5.1 There is complexity as defined in 15.2 above; or

15.5.2 There are special circumstance as defined in 15.3 above; or

15.5.3 There is a real likelihood of imprisonment.

16. Obsolete.

SUPREME COURT BAIL APPLICATIONS

17. Aid may be granted for Supreme Court bail applications provided:

17.1 Bail is opposed by the prosecution and there is a realistic prospect of bail being granted; or

17.2 An applicant seeks to respond to an application for revocation of bail.

INQUESTS

18. Aid may be granted for representation at inquests in circumstances where:

18.1 As a result of the inquest, there is a realistic risk that serious criminal charges may arise against the applicant; or

18.2 Where the outcome of the inquest can reasonably be seen to be likely to have a significant impact on civil proceedings involving the applicant; and

18.3 As a result of such representation, there is a real likelihood of some substantial benefit accruing to the applicant.

APPEALS

19. Aid may be made available to an applicant to appeal a decision where:

19.1 A solicitor certifies that the Court of Appeal is likely to grant the applicant leave to appeal.



- 19.2 In a matter where the Court of Appeal grants the applicant leave to appeal aid will generally be made available.
- 19.3 In a criminal matter, aid will generally be made available to respond to a Crown appeal against sentence.
- 20. Aid will not ordinarily be granted to appeal the decision of a Magistrate to a Single Judge.

SUPERIOR COURT PLEA

- 21. Ordinarily aid will be granted for a plea in mitigation in the District and Supreme Courts except where the matter can be dealt with summarily and the applicant applies to have the matter dealt with in the superior court (other than applications under s32 of the *Sentencing Act*).

SUPERIOR COURT TRIALS

- 22. 22.1 Legal aid may be granted for trial in a superior court where the assigned solicitor advises the matter should be defended.
- 22.2 Where the matter can be dealt with summarily and the applicant applies to have the matter dealt with in the superior court, aid will ordinarily only be granted if the superior court determines it is a serious charge in accordance with the principles of *R v Dietrich*.

PROCEEDS OF CRIME

- 23. Aid is not ordinarily granted to enable an applicant to defend proceedings brought under *Criminal Property Confiscation Act*.

PRIVATE CRIMINAL PROSECUTIONS

- 24. Aid is not granted for private criminal prosecution.
- 25. Obsolete.
- 26. Obsolete.



FAMILY LAW MATTERS

FAMILY CONFERENCING

27. A limited grant of aid may be provided for family conferencing for simple property matters arising out of a de facto relationship where the matter is likely to be resolved by conferencing and the matter is suitable for conferencing.
- 27.1 Matters involving allegations of domestic violence or complex financial issues may be considered unsuitable for conferencing.
- 27.2 Limited grants of aid are subject to availability of staff and funding at any particular time.

DE FACTO PROPERTY SETTLEMENT

28. Aid may be granted for de facto property proceedings provided that:
- 28.1 The applicant has a reasonable chance of success; and
- 28.2 There is a substantial dispute in relation to the distribution of assets;
- 28.3 The property does not comprise chattels alone;
- 28.4 The dispute relates to property in Australia;
- 28.5 The net equity in the disputed property is sufficient to justify the cost of providing assistance;
- 28.6 There have been realistic attempts by the applicant to resolve the issue.
29. An applicant who, at the end of proceedings, is likely to recover sufficient funds from the property settlement to pay the full cost of a private practitioner for services required would not generally be seen to be eligible for legal aid.

PROTECTION APPLICATIONS

30. Aid may be initially granted to a respondent to a protection application for advice and investigation into the respondent's likelihood of successfully defending the application if it is beyond the scope of a duty lawyer service to provide such advice and investigation.
31. Aid may be granted to include representation up to and including a defended hearing provided that:
- 31.1 the level of representation required is outside the normal level of representation that could be provided to the applicant through a duty lawyer service, and



- 31.2 the applicant for aid has a reasonable chance of successfully opposing the application, and
 - 31.3 the children have been taken into care of the CEO, or special circumstances exist.
32. The Commission may make a grant of legal assistance for the separate representation of a child in the Children's Court concerning a protection application if:
- 32.1 a court makes an order for separate representation and asks the Commission to arrange for a child representative to provide separate representation, and
 - 32.2 the Commission decides that it is reasonable to provide a grant of legal assistance for the separate representation.



CIVIL LAW MATTERS

33. Aid may be granted in civil matters provided that:
- 33.1 It is not a matter in which the applicant has access to non litigation assistance which can adequately and appropriately resolve the matter without recourse to litigation; and
 - 33.2 The matter is of such complexity that it appears that the matter could not be adequately presented to the court without the legal representation; and
 - 33.3 The applicant has a reasonable chance of success; and
 - 33.4 The benefit to the assisted person is sufficient to warrant the likely cost of providing aid; or
 - 33.5 The detriment or loss to be suffered by the applicant justifies the likely cost of providing aid.
34. In relation to tribunals or bodies where the applicant is not ordinarily entitled to legal representation, aid will only be granted in exceptional circumstances.

MINOR CIVIL MATTERS

35. Given the non-litigation resources available in the form of advice bureau, minor assistance, self-help kits and pamphlets and the likelihood of cost of legal assistance out weighing benefit, aid is not ordinarily granted for small civil claims (being matters of \$7500.00 or less).

PERSONAL INJURIES COMPENSATION CLAIMS

36. In matters relating to personal injuries damages claims aid may be granted except where:
- 36.1 Liability has already been admitted; or
 - 36.2 It is reasonably apparent that liability will be admitted.
37. Aid for personal injuries damages claims may be granted on a disbursement only basis.

INITIAL LIMITATION OF GRANT OF AID

38. If the applicant is a plaintiff, initially aid would generally only be granted for advice, investigation and negotiation.
39. If the applicant is a defendant and;



- 39.1 Proceedings have issued, then aid would ordinarily be granted to the extent necessary to ensure that the defendant's position is protected;
- 39.2 Proceedings have not issued, then aid would ordinarily be limited initially to advice, investigation and negotiation.

SPECIFIC CIVIL LAW MATTERS

- 40. In general, aid will not be made available to applicants in relation to matters where the applicant has access to non-litigation assistance that can adequately and appropriately resolve the matter without recourse to litigation.
- 41. Aid will not ordinarily be made available in relation to the following matters:
 - 41.1 Conveyancing matters, provided that if the conveyancing is consequential on a matter in which legal aid has been granted then aid may be granted to cover the costs of consequential conveyancing.
 - 41.2 Simple probate matters.
- 42. In circumstances where it is considered appropriate to grant aid in respect of any of the above matters, then to the extent possible, aid should be directed to a staff practitioner.
- 43. Given the non litigation resources available in the form of advice bureau, minor assistance, self help kits and pamphlets, aid is not ordinarily available for the following matters:
 - 43.1 Neighbour disputes;
 - 43.2 Dividing fences matters;
 - 43.3 Union or club disputes;
 - 43.4 Commercial and/or business disputes

RESTRAINING ORDERS

- 44. Aid may be granted for restraining orders in special circumstances
- 45. In circumstances where the applicant for aid establishes a history of violence and/or abuse and is unable to adequately represent herself or himself this will constitute special circumstances.
- 46. Ordinarily neighbour disputes do not constitute special circumstances.

CRIMINAL INJURIES COMPENSATION CLAIMS

- 47. Aid may be granted for an application for criminal injuries compensation where:



- 47.1 The applicant is a child; or
- 47.2 The applicant has an intellectual disability or is otherwise disadvantaged in making the application themselves; or
- 47.3 The application arises as a result of the injuries suffered prior to the proclamation of the ***Criminal Injuries Compensation Act 1982***; and
- 47.4 The benefit to the assisted person is sufficient to warrant the expenditure.

UNFAIR DISMISSAL CLAIMS OR DISPUTES CONCERNING EMPLOYMENT CONTRACTS

- 48. Aid is not ordinarily granted for contractual disputes arising out of employment and/or actions based on unfair dismissal.

MOTOR VEHICLE PROPERTY DAMAGE CLAIMS

- 49. Aid is not ordinarily granted for claims for property damage arising out of a motor vehicle accident.

CLASS OR REPRESENTATIVE ACTION

- 50. Aid is not ordinarily granted for class or representative action except where separate funding is available to aid such action.

ROYAL COMMISSIONS

- 51. Ordinarily aid will not be granted for persons or groups appearing before any Royal Commissions.

HIGH COURT APPEALS

- 52. Aid may be granted for High Court Appeals if the subject matter of the appeal raises an important point of law or a question of substantial public interest.

JUDICIAL REVIEW

- 53. Aid is not granted for applications for judicial review of decision relating to the assessment of legal assistance.