



LEGAL AID
WESTERN AUSTRALIA

Chapter 6A

**PRIORITY MATTER GUIDELINES
FOR LEGAL ASSISTANCE IN
STATE MATTERS**

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Manual of Legal Aid



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INTRODUCTION

Pursuant to its power under s15 (1)(e) of the *Legal Aid Commission Act 1976* the Commission on 19 December 1995 resolved guidelines with respect to the determination of the class of matters for which legal assistance may be provided and to determine the allocation of legal aid between private practitioners and staff practitioners.

These priority matter guidelines are to be read in conjunction with the Uniform Eligibility Guidelines 1997. The priority guidelines establish a procedure of prioritising matters in terms of funding so as to reflect comparative appropriateness for legal aid funding. State matters do not include proceedings under the *Family Court Act* (see Commonwealth Practices and Guidelines - Chapter 7).

These guidelines apply to the assessment of legal assistance pursuant to the Uniform Eligibility Guidelines 1997. The Priority Matters are defined in Schedule 1.

1. Matters for which legal assistance may be granted and assigned to a staff practitioner on a director assignment are referred to in priorities 1, 2, and 3.
2. Matters for which legal assistance is not ordinarily granted (but if granted are assigned to a staff practitioner on a director assignment) are referred to in priority 4.
3. Matters for which legal assistance may be granted and assigned to a private practitioner are:
 - i. Priority 1 matters;
 - ii. Priority 2 matters;
 - iii. Priority 3 and 4 matters where a grant of legal assistance cannot be assigned to a staff practitioner as a director assignment because of a conflict of interest and where it is unreasonable that the applicant be unrepresented and otherwise qualifies for legal assistance financially and under the Uniform Eligibility Guidelines 1997; or
 - iv. Priority 3 and 4 matters where a grant of legal assistance that has been assigned to a staff practitioner is transferred to a private practitioner pursuant to the Private Practitioner Manual;
 - v. Priority 3 and 4 matters where applicant is disadvantaged because of remoteness of location and funds are available.
4. Legal assistance is not granted for priority 5 matters.

These guidelines do not apply to Priority 6 matters that are separately funded.

These guidelines are to be observed by legal aid authorities and review committees pursuant to section 15(1)(i) in performing their functions so far as they are relevant under sections 14, 37, 39, 44, 48 and 49A of the *Legal Aid Commission Act 1976*: -



These guidelines commenced on 1 July 1997 with the most recent amendments becoming operable on 1 July 2006.

PRIORITY 1

<i>Jurisdiction</i>	<i>Matters</i>	<i>Uniform Eligibility Guidelines</i>
State Criminal Law	Supreme Court and District Court trial or plea in mitigation.	21, 22
	Children's Court trial or plea in mitigation before the President.	11.1, 12.2



PRIORITY 2

<i>Jurisdiction</i>	<i>Matters</i>	<i>Uniform Eligibility Guidelines</i>
State Criminal Law	Appeals from District and Supreme Court where merit or to respond to Crown appeals.	19
	Magistrates Court plea in mitigation where the representation required is outside the scope of a duty lawyer service <u>and</u> there is either a special circumstance <u>or</u> a real likelihood of immediate imprisonment and the applicant is on specified orders.	14
	Magistrates Court trial where there is a reasonable prospect of an acquittal <u>and</u> the case involves complexity <u>and</u> there is either a special circumstance <u>or</u> a real likelihood of immediate imprisonment and the applicant is on specified orders.	15
	Children’s Court trial or plea in mitigation where the representation required is outside the normal level of representation of a duty lawyer service <u>and</u> a special circumstance exists <u>or</u> there is a likelihood that conviction will result in the applicant receiving a term of immediate imprisonment or detention.	11.2
		11.3
		11.4
Children’s Court review, rehearing or appeal.	12.1	
Supreme Court bail applications.	13	
State Civil Law	Disbursement only grants of assistance where court can order damages including common law claims for personal injury and medical negligence.	17
		33
		36
	37	
Restraining orders – where applicant has a disadvantage due to location.	4.5	
	44	
State Family Law	Care and protection – separate representation for children.	32
	Care and protection – respondents (adults) for advice and investigation if beyond the scope of duty lawyer and extend if chance of success of opposing application and the children have been taken into care of CEO, or special	30
		31



<i>Jurisdiction</i>	<i>Matters</i>	<i>Uniform Eligibility Guidelines</i>
	circumstances exist.	
	Family Conferencing (de facto couples – no children) where appropriate and staff and funding available.	28



PRIORITY 3

<i>Jurisdiction</i>	<i>Matters</i>	<i>Uniform Eligibility Guidelines</i>
State Criminal Law	Children’s Court trial or plea in mitigation.	11.5
	Magistrates Court plea in mitigation where the matter is (a) outside the scope of a duty lawyer service; or (b) there is a special circumstance; or (c) a real likelihood of immediate imprisonment.	14.4
	Magistrates Court trial where there is a reasonable prospect of acquittal <u>and</u> there is at least one of the following: (a) complexity; or (b) a special circumstance; or (c) a real likelihood of immediate imprisonment.	15.5
	Appeals from Magistrate to Single Judge where merit.	20
	Test cases of public importance or significant number of people affected.	9
	High Court appeals on important point of law or public interest.	52
State Civil Law	Restraining orders (domestic violence)	44, 45, 46
	Worker’s compensation s11 applications and review where parties consent to legal representation.	33
	Personal injury where liability disputed.	36
	Criminal injuries compensation where child, disability or pre 1982 matters.	47
	General civil matters involving State jurisdiction.	33
	Test cases of public importance or significant number of people affected involving State jurisdiction.	9
	High Court appeals on important point of State law or public interest arising from State	9 52



<i>Jurisdiction</i>	<i>Matters</i>	<i>Uniform Eligibility Guidelines</i>
	jurisdiction.	
State Family Law	Defacto property settlement (Supreme Court)	28
	Test cases of public importance or significant number of people affected.	9

**PRIORITY 4**

<i>Jurisdiction</i>	<i>Matters</i>	<i>Uniform Eligibility Guidelines</i>
State Criminal Law	Inquests.	18
State Civil Law	Conveyancing (unless consequential to a grant of aid).	41
	Simple Probate.	41
	Neighbour Disputes.	43
	Dividing Fences.	43
	Union or club dispute.	43
	Defamation.	
	Commercial/business dispute.	43
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	Motor vehicle property damage.	49
	Class or representative action (State only).	50
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PRIORITY 5

<i>Jurisdiction</i>	<i>Matters</i>	<i>Uniform Eligibility Guidelines</i>
State Criminal Law	Private criminal prosecution.	24
	Responding to proceeds of crime applications.	23
State Civil Law	Judicial review of legal assistance decisions.	53
	Minor Civil matters under \$7,500.00.	35



PRIORITY 6

SEPARATELY FUNDED MATTERS FOR WHICH GUIDELINES NOT APPLICABLE.

<i>Jurisdiction</i>	<i>Matters</i>	<i>Uniform Eligibility Guidelines</i>
State Civil Law	Asbestosis.	