

Part 4 **Civil law guidelines**

Note For the civil law priorities in the Commonwealth Legal Aid Priorities, see subclause 6.6 of the Agreement.

Guideline 1 **General**

1.1 **Limited initial assistance**

The Commission may make a limited Grant of Legal Assistance to an applicant for assistance in a civil law matter for:

- (a) an investigation into and report on the merits of a case, or
- (b) the mediation of a dispute.

1.2 **Assistance for damages actions**

Where a civil law action may result in the applicant for assistance receiving an award of damages or property, the Commission may make a Grant of Legal Assistance if the Commission is satisfied from the material provided to it that:

- (a) the applicant is likely to receive damages or property if the action is successful
- (b) the action could not reasonably be expected to be conducted under a conditional costs agreement or similar arrangement with a private legal practitioner, and
- (b) the applicant for assistance cannot obtain appropriate legal assistance from another source.

Guideline 2 **Social security and other Commonwealth benefits**

2.1 **Representation at Administrative Appeals Tribunal**

Subject to guideline 2.2, the Commission may make a Grant of Legal Assistance to an applicant for assistance for representation at the Administrative Appeals Tribunal if:

- (a) it is considered that the applicant may incriminate himself or herself
- (b) the case is complicated
- (c) it would be unreasonable to expect the applicant for assistance to adequately represent himself or herself due to special circumstances of a kind listed in the Commonwealth Legal Aid Priorities, or

Note Special circumstances are set out in subclause paragraph 6.7.2 of the Agreement.

- (d) the Commission determines that the appeal involves an important or complex question of law.

2.2 Appeals to Administrative Appeals Tribunal

The Commission may make a Grant of Legal Assistance to an applicant for assistance to obtain instructions and necessary reports and prepare submissions for an appeal to the Administrative Appeals Tribunal, if:

- (a) the appeal may result in the applicant being charged with a criminal offence
- (b) the applicant cannot afford to pay for medical reports, and the appeal is about the health of the applicant or someone for whom the applicant has parental or legal responsibility
- (c) it would be unreasonable to expect the applicant for assistance to adequately represent himself or herself due to special circumstances of a kind listed in the Commonwealth Legal Aid Priorities, or

Note Special circumstances are set out in subclause paragraph 6.7.2 of the Agreement.

- (d) the Commission determines that the appeal involves important or complex questions of law.

Guideline 3 Migration cases

3.1 Assistance for limited migration matters

- (1) The Commission may make a Grant of Legal Assistance for proceedings in the Federal Court, Federal Magistrates Court or High Court dealing with a migration matter, including a refugee matter, only if:
 - (a) there are differences of judicial opinion that:
 - (i) have not been settled by the Full Court of the Federal Court or the High Court, and
 - (ii) relate to an issue in dispute in the matter, or
 - (b) the proceedings seek to challenge the lawfulness of detention.

Note Guideline 3.1(1)(b) does not include a challenge to a decision about a visa or a deportation order.

- (2) Guideline 3.1(1) applies to a matter, even if the matter could also be characterised as falling within another Commonwealth Legal Aid Priority or guideline in these Commonwealth Legal Aid Guidelines.
- (3) In all other cases, applicants should be referred to the Immigration Advice and Application Assistance Scheme (IAAAS) for possible assistance.

Guideline 4 Equal opportunity and discrimination cases

4.1 Assistance for certain matters if substantial benefit

Subject to guideline 1.2 in this Part 4, the Commission may make a Grant of Legal Assistance for an equal opportunity or discrimination case if there is a strong prospect of substantial benefit being gained by the applicant for assistance and also by the public or a section of the public in relation to the matter.