

Legal Aid For Tasmanians

CIVIL DISBURSEMENT FUND

GUIDELINES

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Introduction

Under s6 of the *Legal Aid Commission Act 1990*, one of the functions of the Legal Aid Commission of Tasmania (known as Tasmanian Legal Aid – TLA) is to perform any function that the Attorney-General of Tasmania, the Minister for Justice and Industrial Relations requires. The Attorney-General has directed TLA to exercise the function of managing the Civil Disbursements Fund and making decisions on applications to the fund. To assist it, TLA set up an advisory committee called the Civil Disbursement Fund Committee to make recommendations on applications and to advise TLA on the operation of the fund.

Definition of “ Disbursements”

“Disbursements” are, for the purpose of these guidelines, legal expenses that are paid by the Civil Disbursement Fund on behalf of the Applicant.

The following are examples of the types of expenses that will be covered by the Civil Disbursement Fund, but the list is not exhaustive. Court filing fees, Medical reports, expert reports, interpreter’s fees, conduct money, witness’s expenses, transcript fees, trial fees, solicitor’s travelling and accommodation fees.

The following is a list of expenses that will **NOT** be covered by the Civil Disbursement Fund. Solicitors and Barrister’s fees, sundry items including telephone, fax, postage, photocopying and courier fees.

1. Selection of Cases

- 1.1 The Civil Disbursement Fund (“CDF”) will be governed by the Legal Aid Commission of Tasmania, assisted by the Civil Disbursement Fund Committee (“The Committee”). The Committee is an advisory committee of the Legal Aid Commission of Tasmania whose members will determine applications as they are submitted. The Legal Aid Commission of Tasmania has such powers as are necessary to enable it to perform its function of running the Civil Disbursement Fund and selecting cases that are eligible for payments from the Civil Disbursement Fund.
- 1.2 The Committee will not be accountable for the selection or rejection of any case for a grant of assistance, and will not be obliged to give reasons for the acceptance or rejection of any application.
- 1.3 It is a condition of assistance that the Applicant pay back to the CDF the cost of all disbursements incurred by the CDF on behalf of the Applicant. Disbursements are to be repaid in full plus a premium applied. The premium applied to the disbursement will be in accordance with Guideline 7 herein. In fixing the amount of the premium to be repaid, the Commission will consider any factor it regards as relevant, including the

level of risk to the disbursement being repaid, the likelihood of success of the action involved, and the likely time before the disbursement will be repaid. The Commission will make all decisions in the context of its obligation to ensure the continuing financial viability of the Fund.

2. Assessment of Applications

- 2.1 The Committee Member will consider each application for litigation assistance in accordance with these guidelines and make a decision on recommending whether the application should be accepted or not.
- 2.2 The Commission will not approve assistance for any litigation proposed or actual outside the State of Tasmania unless the cause of action will have arisen in the State of Tasmania. Assistance is limited to the public in Tasmania.
- 2.3 Assistance can be granted to a person who is resident outside the State of Tasmania, provided such person was resident in the State at the time the cause of action arose and there is sufficient nexus with the State and it is appropriate in the circumstances that assistance be granted.
- 2.4 The Commission is not responsible for legal costs incurred by the Applicant in making the application to the Fund nor for the costs of supplying material supporting such application.
- 2.5 Documents delivered to the Committee for the purpose of consideration of applications by the committee, or further requested by the Committee may be provided to the Commission upon the conclusion of consideration by the Committee. All non-financial documents received in the application process will be retained by the Commission. Financial documents will be returned to the Applicant at the conclusion of the matter.
- 2.6 All applications must be in writing and the correct application forms used. Application forms are on the Legal Aid Commission of Tasmania website at <http://www.legalaid.tas.gov.au/for-lawyers/civil-disbursement-fund/> . Application forms are to be submitted via email to cdf@legalaid.tas.gov.au.
- 2.7 Applications not presented to the Committee in the correct form will be not be considered and will be returned for correction.

3. Application Fee

- 3.1 A \$200 application fee must accompany all applications for CDF funding. Applications will not be considered until the fee is received in the form of a cheque made payable to 'The Legal Aid Commission of Tasmania'.

- 3.2 The application fee will be refunded in cases where an application fails our means test.
- 3.3 The application fee will not be refunded in cases where an application fails our merits test.
- 3.4 The application fee will be refunded in cases where we have insufficient funds to make the grant.
- 3.5 If the application passes the merits test but we have insufficient funds, we will contact you to discuss your options.

4. Means Test

- 4.1 Each application will be considered upon its individual merits.
- 4.2 Each applicant must be able to demonstrate that at the time of application, the Applicant is not in a position to pay the disbursement costs involved with the Applicant's legal matter. The applicant must provide in the application any materials necessary to demonstrate this inability. The Applicant will disclose to the Commission the Applicant's full financial circumstances. The Applicant will, if assistance is granted, promptly disclose any significant variations in his or her financial circumstances as they arise. The Applicant will if required by the Commission, authorise any other person to disclose those circumstances.
- 4.3 Assistance will only be granted to an Applicant who is unable to reasonably meet the expected cost of litigation or actual litigation from the income and assets available to the Applicant.
- 4.4 If it appears to the Commission that the Applicant may be eligible for legal aid, or similar service the Commission may recommend that the application may be rejected, or may postpone consideration for that application. The Commission will inform the Applicant of that possible entitlement to legal aid before proceeding to determine

whether or not to recommend the Applicant be granted assistance by the CDF.
- 4.5 The Commission may at any time require the Applicant and his/her solicitor ('the solicitor') to provide to the Commission any information or documents concerning the financial circumstances of the Applicant, details of any negotiations arising out of the assisted litigation, and generally the circumstances of the litigation.
- 4.6 It is a condition of the grant of assistance that the Applicant and the Solicitor will comply with any such requirement of the Commission and the Applicant will authorise and direct the Solicitor to provide to the Commission that information.

5. Merits Test

- 5.1 The Committee Member considers the merits of the Applicant's Case. Each review takes into account the prospects of success, the quantum of damages and the likelihood of recovery.
- 5.2 The CDF is only available to individuals who are being represented by a Solicitor. The Applicant's Solicitor must be either acting on a no win/ no fee basis, or a reduced or delayed fee. Where there is a delayed fee situation the Applicant must be able to demonstrate that if the case is unsuccessful, then the Applicant will not be able to fully pay the Solicitor's fees for a lengthy period of time.
- 5.3 Evidence of the billing arrangements between the Applicant and the Solicitor must be provided to the Committee at the time of making the Application.
- 5.4 The Commission will not consider applications for the following:
- Criminal Matters
 - Family/ De facto Matters
 - Proceedings before the Resource Management and Planning Appeals Tribunal.
 - MAIB matters.
 - any other category of claim that the Commission decides
- 5.5 Preference will be given to Applicants who are seeking a settlement of damages and whose case, at the time of application has, on the basis of the information provided to the Commission, a reasonable likelihood of success. In support of the application, the Solicitor will provide the basis of the case, if known, of the opponent.
- 5.6 The Commission reserves the right to refuse funding at its discretion for any 'expert' report.
- 5.7 At the time of making the Application the Applicant must make an undertaking to insist on recovering costs from the other party.

6. Contribution

- 6.1 The Commission requires the Applicant to contribute to the cost of disbursements. Please refer to Guideline 3.1 to 3.5.

7. Premium

- 7.1 A 30% premium will be applied to all medical negligence cases;

7.2 A 20% premium will be applied to all other cases.

8. Variation of Assistance

8.1 The Commission may at any time after the approval of an application for assistance, vary, extend, suspend, or cancel such assistance on any of the following grounds:

- The information provided by the Applicant or Solicitor to the Committee is materially inaccurate.
- The Applicant's case appears to lack merit.
- The ultimate return to the CDF (taking into account anticipated disbursements) is likely to be significantly different from any earlier anticipated return.
- If the Commission considers that the solvency of the Fund is threatened by the continuing grant or extension of the assistance.
- The Applicant has unreasonably refused to follow advice from their Solicitor.
- Any significant change in the Applicant's prospects of success in the litigation, the means of the Applicant, the importance of the case or the likely financial return to the CDF.
- A failure by the Applicant or Solicitor to report adequately to the Commission upon request.
- A failure by the Applicant or Solicitor to comply with any of the guidelines or any request or direction by the Commission.
- Legal Practitioners have not entered into or have failed to provide to the Committee a copy of the fee agreement.
- Any other good cause.

8.2 Subject to the above, the Commission will supply upon request by the Applicant reasons for such variation, extension, suspension or cancellation.

9. Reporting to the Committee

9.1 The Commission may require a report from the Applicant or Solicitor at any time regarding any matter connected with the assisted litigation and the financial

circumstances of the Applicant and such report will be provided to the Commission upon request within a reasonable time.

- 9.2 The Solicitor will inform the Commission of all court and informal conference appointments promptly upon the dates being set and of any matters that come to his or her attention that relate to the matters set out in guideline 8.1
- 9.3 The Applicant will, if possible, provide accurate disbursement cost estimates to the Commission. Where actual disbursement costs are available at the time of application they must be provided to the Committee.
- 9.4 If the Applicant or Solicitor discovers a significant variation to these original disbursement costs they must notify the Committee as soon as practicable and reapply for those disbursements to be paid.

10. Accounting

- 10.1 The Commission will pay the Applicant's disbursements from the CDF on an agreed scale together with any Goods and Services Tax ("GST") payable in respect of such disbursements. The CDF does not pay solicitor's costs, or barrister's fees or reimburse general office expenses such as photocopying, couriers, telephone or facsimile charge or postage.
- 10.2 The CDF does not pay the cost of the solicitor reporting to the CDF.
- 10.3 The Commission will grant assistance to the Applicant for the payment of the latter's disbursements on an agreed scale to extend from the date of receipt of the application, to a set stage in the proceedings as follows:-
 - (a) Investigation of claim to drafting of a writ or other process with Statement of Claim (or equivalent document);
 - (b) Filing to pre trial conference;
 - (c) To include trial;
 - (d) To include post trial procedures.
- 10.4 At the conclusion of each of the above stage of litigation the Applicant may apply to extend the assistance to cover the disbursements for the next stage of the proceedings.
- 10.5 Upon the grant of assistance, the Applicant will irrevocably authorise and direct the Solicitor and any subsequent solicitor in the same litigation, to pay to the Commission the cost of the disbursements and the premium before releasing any other money to the Applicant.

- 10.6 Upon recovery of any monies with respect to the claim after a grant of assistance by the Applicant or the Solicitor, those monies will be first applied to repaying the cost of the disbursements and the premium.
- 10.7 Save and except as may be specifically agreed by the Commission in the event that the Applicant's claim is not successful, then costs awarded against the Applicant will be borne by the Applicant and the CDF will not be liable for such costs in any circumstances.
- 10.8 When accepting assistance from the CDF, the Applicant will assign to the Commission a joint right together with the Applicant pursuant to the Legal Practitioners Act to request itemised accounts for disbursements and have such disbursements taxed but will be entitled to see a copy of any account forwarded by the Solicitor to the Committee.
- 10.9 Cost of disbursements owed to the CDF by the Applicant are to be paid back to the CDF within the set timeframe. This timeframe is to be determined by the Commission and the Commission is to inform the Applicant at the time of the notification of the successful application.
- 10.10 The Commission may vary the timeframe mentioned in 8.9 as it sees fit or if the financial circumstances of the Applicant change.

11. Termination of Assistance

- 11.1 An Applicant may terminate the assistance at any time.
- 11.2 If an Applicant terminates the agreement and decides not to proceed with the legal action on the advice of their solicitor, the solicitor acting for the Applicant is to provide to the Commission evidence to support the reasons for termination of the case and the Assistance Agreement.
- 11.3 If the Commission is not satisfied by the reasons for the Solicitor's advice for termination mentioned in 11.2, the Commission may require the Applicant to repay to the CDF, all costs incurred by the CDF on behalf of the Applicant plus the premium applied to those costs. Costs will be repaid by a date set by the Commission.

12. Miscellaneous

- 12.1 There will be no appeal or review against any decision of the Commission.
- 12.2 The Commission may amend these rules at any time and unless otherwise resolved by the Commission those amendments will take effect from the date of amendment in relation to all cases current and future.