

Changes to Commonwealth criminal, civil and family law matters

The Legal Aid NSW Board has approved amendments to the Availability of Funds Test in relation to Commonwealth criminal, civil and family law matters.

Background

The Expensive Commonwealth Criminal Cases Fund (ECCCF), which was established in 2000, is available to reimburse costs in criminal trials where the cost of the trial exceeds \$40,000. Where there are multiple accused, the \$40,000 is calculated as the cost of the matter as a whole, including all accused who are receiving legal aid.

The fund was designed to ensure that expensive Commonwealth criminal trials do not impact on the ability of legal aid commissions to provide legal assistance for other Commonwealth legal aid priorities.

However, in last year's Mid-Year Economic and Fiscal Outlook the Government announced a significant cut in the ECCCF, reducing the funding by \$6.5 million over four years.

Legal Aid NSW closely monitors the costs of expensive Commonwealth criminal law cases and has a number of savings measures in place to reduce expenditure and to ensure that these cases are run efficiently and effectively. These include:

- Establishing the Commonwealth Crimes Unit within Legal Aid NSW which identifies appropriate early pleas of guilty
- Using NSW Public Defenders where available to significantly reduce costs
- Strictly limiting costs paid for preparation in Commonwealth criminal trials
- Only briefing counsel with a track record of making trials run efficiently and using only junior counsel in most cases
- Claiming legal costs from confiscated assets when possible.

But our ability to contain criminal costs is limited since we cannot influence the number or types of cases brought by prosecutors, or the listing of matters by the Courts.

Nevertheless, there has been a significant and unexpected increase in Legal Aid NSW expenditure for complex Commonwealth criminal law matters this financial year.

As a result of these factors, there are no funds remaining in the ECCCCF for reimbursement for the remainder of this financial year.

Given the lack of funds in the ECCCCF to reimburse us for our costs in expensive criminal law cases, we estimate that we have a shortfall in our Commonwealth budget for the current financial year.

The Board has therefore reluctantly approved policy changes to restrict funding for expensive Commonwealth indictable matters to ensure that Legal Aid NSW remains within our Commonwealth budget.

We are aware of the potential impact of this decision, and we will work closely with all our stakeholders to reduce the impact on the justice system and our clients as much as possible.

Policy changes

Commonwealth indictable trials

Under the Availability of Funds Test, Legal Aid NSW will not fund any Commonwealth indictable trial where there are three or more accused or where it is likely the trial will cost over \$40,000.

Existing grants where the trial is listed to commence on or before 31 March 2015 will not be impacted.

Where a trial is listed to commence on or after 1 April 2015, the grant will be terminated if the matter does not satisfy the funding criteria approved by the Board,

Under the new policy, Legal Aid NSW will continue to provide grants of aid for committals for all Commonwealth crime matters and to fund matters where restrained assets are available under the *Proceeds of Crime Act 2002* (Cth), regardless of the commencement date or duration of the trial.

For details of the policy changes see Policy Online, [the Availability of Funds Test at 9.2.1](#).

Commonwealth family law matters

Under the Availability of Funds Test, legal aid is not available for Contravention and Enforcement Order proceedings or for Divorce and nullity of marriage matters and aid is available in limited circumstances for International Child Abduction matters.

For details of the policy see Policy Online, the [Availability of Funds Test at 9.2.2-9.2.4](#).

Commonwealth civil law matters

Under the Availability of Funds Test, legal aid is only available for Commonwealth civil law matters where the inhouse practice has capacity to conduct the matter.

For details of the policy see [Availability of Funds Test at 9.2.5](#).

Where do I find the changes?

The changes can be found in Policy Online under the Availability of Funds Test on the Legal Aid NSW website.

Commencement date

The changes are effective for determinations of applications made on or after 12 December 2014.