

NATIONAL PARTNERSHIP AGREEMENT ON LEGAL ASSISTANCE SERVICES

Council of
Australian
Governments

An agreement between

- n the Commonwealth of Australia and
- n the States and Territories, being:
 - t The State of New South Wales
 - t The State of Victoria
 - t The State of Queensland
 - t The State of Western Australia
 - t The State of South Australia
 - t The State of Tasmania
 - t The Australian Capital Territory
 - t The Northern Territory of Australia

An agreement to facilitate reform in the legal assistance sector and provide access to justice for disadvantaged Australians through the delivery of legal assistance services.

National Partnership Agreement on Legal Assistance Services

PRELIMINARIES

1. This National Partnership Agreement (the Agreement) is created subject to the provisions of the *Intergovernmental Agreement on Federal Financial Relations* and should be read in conjunction with that Agreement and subsidiary schedules.
2. The Parties are committed to finding better ways to help people resolve their legal problems. This Agreement builds on long-standing arrangements for the effective delivery of legal services to disadvantaged Australians and the wider community. Addressing social inclusion, including Indigenous disadvantage, and adopting a more holistic approach to resolving people's legal problems will improve the way services are provided. That commitment is embodied in the objectives and outcomes of this Agreement. This Agreement will be implemented consistently with the objectives and outcomes of all National Agreements and National Partnerships entered into by the Parties.
3. This Agreement is established to support a holistic approach to the reform of the delivery of legal assistance services by legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services.
4. Through the Agreement, the Commonwealth and States and Territories will improve the targeting of services for disadvantaged Australians and the wider community, realise opportunities for using resources more effectively and efficiently between service providers and progress national reform of issues that affect legal assistance services.
5. The Parties to the Agreement recognise that decisions regarding future legal assistance service delivery must be considered in the context of the justice sector as a whole, and support the principles of the Australian Government's strategic framework for access to justice.
6. The Parties enter into this Agreement in good faith. Each party will act reasonably in their dealings with each other and will perform their respective obligations honestly and fairly and in the interests of legal assistance service users.
7. The legal aid services referred to in this Agreement are specific arrangements for the delivery of Commonwealth funded services by State and Territory legal aid commissions under the Commonwealth Legal Aid Program. The Commonwealth will maintain separate agreements for community legal centres, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services that are consistent with the objectives of this Agreement. The jurisdictional forums proposed in clause 25 will be the key mechanism to ensure better coordination and targeting of legal assistance services.
8. This Agreement confirms the financial commitment of the Commonwealth to the provision of legal aid services for disadvantaged Australians.

PART 1 – FORMALITIES

Parties to this Agreement

9. In entering this Agreement, the Commonwealth and the States and Territories recognise that they have a mutual interest in improving access to justice for disadvantaged Australians through the provision of legal assistance services and need to work together to achieve this outcome.

Term of the Agreement

10. This Agreement will commence on 1 July 2010 or as soon as the Commonwealth and one other Party signs the Agreement, whichever occurs later, and will expire on 30 June 2014, or earlier termination as agreed in writing by the Parties.
11. Recognising the ongoing nature of legal aid funding, arrangements for the extension of this aspect of the Agreement will be agreed between the Parties to the Agreement prior to 30 June 2014.

Delegations

12. The Attorney-General is authorised to agree or amend schedules to this Agreement on behalf of the Commonwealth.
13. Respective State and Territory Ministers are authorised to agree or amend schedules to this Agreement on behalf of their State or Territory.

Interpretation

14. Unless otherwise specified, the following terms and definitions are used throughout this Agreement:
 - (a) *Commonwealth legal aid service priorities* means priorities established by the Commonwealth for the delivery of Commonwealth funded legal services by legal aid commissions as described in Schedule A
 - (b) *Dispute resolution services* means services provided by legal aid commissions, such as lawyer assisted negotiation and participation in legal aid dispute resolution programs
 - (c) *Duty lawyer service* means advice and representation services provided at a court or tribunal
 - (d) *Early intervention services* means legal services provided by legal aid commissions to assist people to resolve their legal problem before it escalates, such as legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance
 - (e) *Grant of legal aid* means the allocation of funding for a legal representative to undertake ongoing representation of a matter for a person who is considered eligible under Schedules A and B
 - (f) *Legal aid services* means Commonwealth funded legal services delivered by legal aid commissions. A reference in this Agreement to 'legal aid' or 'legal aid services' is limited to legal aid used in this specific sense
 - (g) *Legal assistance services* means all of the sector-wide legal service providers, including legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services and

family violence prevention legal services. Use of the term 'legal assistance services' in the Agreement is intended to refer to services provided in this broader context

- (h) *Litigation services* means legal representation in court and tribunal proceedings provided by legal aid commissions, which is subject to a person's eligibility for a grant of legal aid
- (i) *Post-resolution support services* means legal advice provided by legal aid commissions regarding the resolved outcome of a matter, including the provision of information about and referral to other service providers if appropriate
- (j) *Preventative legal services* means legal services provided by legal aid commissions that inform and build individual and community resilience through community legal education, legal information and referral.

PART 2 – OBJECTIVES, OUTCOMES AND OUTPUTS

Objective

- 15. A national system of legal assistance that is integrated, efficient and cost-effective, and focused on providing services for disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness.

Outcomes

- 16. The Agreement will contribute to the following reforms across the legal assistance sector and to successful outcomes to be achieved by legal aid commissions providing efficient and cost-effective legal aid services for disadvantaged Australians in accordance with Commonwealth legal aid service priorities:
 - a) earlier resolution of legal problems for disadvantaged Australians that, when appropriate, avoids the need for litigation
 - b) more appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion
 - c) increased collaboration and cooperation between legal assistance providers themselves and with other service providers to ensure clients receive 'joined up' service provision to address legal and other problems, and
 - d) strategic national response to critical challenges and pressures affecting the legal assistance sector.

Outputs

- 17. The objectives and outcomes of this Agreement will be achieved through:
 - a) legal assistance providers increasing the delivery of preventative, early intervention and dispute resolution services
 - b) comprehensive legal information services and seamless referral for preventative and early intervention legal assistance services within each State and Territory
 - c) delivery by State and Territory legal aid commissions of efficient and cost effective legal aid services provided in accordance with Schedules A and B, consistent with the

access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness, including:

- i. preventative legal services such as community legal education, legal information and referral
- ii. early intervention legal services such as advice, minor assistance and advocacy other than advocacy provided under a grant of legal aid
- iii. dispute resolution services, duty lawyer services, litigation services and post resolution support services.

PART 3 - PERFORMANCE REPORTING

Performance benchmarks and indicators

18. Performance will be evaluated against the broad goals of sector reform which promote a client-centred focus and include comprehensive access to information, seamless referral, improved coordination and targeting of services between legal assistance service providers and the linking of legal aid services with other service providers to ensure 'joined up' service delivery.
19. The evaluation of the performance of legal aid commissions will focus on how service providers increase their delivery of successful service outcomes, how they increase and direct their service delivery towards preventative and early intervention services as well as increasing the efficiency of their operations.
20. All Parties agree to the national performance benchmarks demonstrated against the performance indicators listed below.

Performance indicators	Timeline	Performance benchmark
1. Number of successful legal aid service outcomes delivered by legal aid commissions	30 June 2014	As demonstrated through: a) Less than 20% of legal aid grant recipients return seeking a grant of legal aid for the same type of matter within a 24 month period b) 10% increase in the number of successful outcomes over four years, and c) client satisfaction feedback.
2. Number of early intervention services delivered by legal aid commissions in accordance with the Commonwealth Legal Aid priorities in Schedule A	30 June 2014	30% increase in number of early intervention services

3.Total number of services delivered by legal aid commissions	30 June 2014	25 % increase in the total number of services delivered by legal aid commissions
<p>4.Development and implementation of an Information and Referral Strategy that ensures comprehensive access to information and seamless referral for preventative and early intervention services delivered by States and Territories, including by:</p> <ul style="list-style-type: none"> • improved linkages between legal aid commissions and other appropriate legal and non-legal services, and • improved accuracy and effectiveness of referral practices, both incoming and outgoing. 	Strategy to be developed by 30 June 2011 and fully implemented by 30 June 2014	<p>As demonstrated through:</p> <p>a)client satisfaction feedback</p> <p>b)the number of referral arrangements identified and implemented, and</p> <p>c)the number of referrals, including warm referrals (where the initial contact was made by the referring organisation on behalf of the client) to another service</p>
<p>5.Number of:</p> <ul style="list-style-type: none"> • duty services • dispute resolution services, and • grants of aid <p>In Commonwealth family, civil and criminal law matters delivered by legal aid commissions</p>	Every six months	10% variance from baseline services delivered in 2009-10

Reporting arrangements

21. The States and Territories will each provide to the Commonwealth a report in respect of this Agreement every six months against the State and Territory responsibilities, outputs, performance benchmarks and timelines.
22. Each report will identify the timeframes and key factors for achieving each of the benchmarks in this Agreement and provide a status report against each benchmark. The report will also detail any action required to address unsatisfactory progress in achieving the benchmarks.
23. Reporting against benchmarks will be disaggregated by the service types identified in the outputs and defined in clause 14, (being preventative legal services, early intervention services,

dispute resolution services, duty lawyer services, litigation services and post resolution services) and by law type (being family law, criminal law and civil law). Reporting on total expenditure will be disaggregated by service type. Reporting on grants of legal aid will identify for each law type:

- a) total expenditure
- b) the number of grants, and
- c) the number of clients:
 - i) from non-metropolitan areas
 - ii) who identified themselves as Indigenous
 - iii) who required an interpreter, and
 - iv) who were in receipt of Centrelink pension or income support payment.

24. Reports will be provided to the Commonwealth within two months of the end of the relevant period.

Information sharing

25. Each State and Territory will establish a forum to consider opportunities for improved coordination and targeting of services between legal assistance service providers, as well as the linking of legal aid services with other service providers, within the jurisdiction of each State and Territory. Forum meetings will include participation by the Commonwealth and will inform and be informed by work undertaken by a National Advisory Body, led by the Commonwealth. Forum meetings will occur at least once in each financial year.
26. State and Territory representatives will meet twice yearly with the Commonwealth to discuss the achievement by legal aid commissions of performance indicators against performance benchmarks.

PART 4 – ROLES AND RESPONSIBILITIES OF EACH PARTY

27. To realise the objectives and commitments in this Agreement, each Party has specific roles and responsibilities, as outlined below.

Role of the Commonwealth

28. The Commonwealth will have responsibility for:
 - a) providing a financial contribution to the States and Territories for the delivery of Commonwealth legal aid services as set out in this Agreement
 - b) administering a separate funding scheme for Expensive Commonwealth Criminal Cases to which legal aid commissions can apply on a reimbursement basis

- c) monitoring performance of legal aid commissions against the performance indicators and benchmarks
- d) collecting and maintaining national information about legal aid service delivery under the Legal Aid Reporting Initiative
- e) specifying Commonwealth legal aid priorities for delivery of legal services in relation to Commonwealth law matters. In circumstances where Commonwealth legal aid priorities require amendment, the Commonwealth will provide reasonable notice of any proposed change to the priorities and provide an opportunity for States and Territories to comment on the likely impact of the change, before any amendment occurs
- f) specifying the key principles for standardising eligibility for a grant of legal aid in relation to Commonwealth law matters
- g) establishing a national legal assistance advisory body to inform legal assistance policy development, and
- h) participating in jurisdictional forums to consider better coordination and targeting of legal assistance services, established by each State and Territory.

Role of the States and Territories

29. The States and Territories will have responsibility for:

- a) the delivery of Commonwealth funded legal aid services in accordance with the service priorities as outlined in Schedule A
- b) determining eligibility for a grant of legal aid in Commonwealth law matters in accordance with the key principles outlined in Schedule B
- c) developing effective mechanisms for collecting data that includes assessing supply of and demand for legal assistance services and identifying unmet legal need
- d) providing performance and financial reporting to the Commonwealth through meetings
- e) supporting increased coordination and collaboration between legal assistance providers and increased links between legal aid commissions and other service providers, and
- f) providing a forum, that includes Commonwealth participation, to consider opportunities for improved coordination and targeting of services between legal assistance service providers within the jurisdiction of each State and Territory.

PART 5 – FINANCIAL ARRANGEMENTS

30. Commonwealth funding for the States and Territories to deliver legal aid services through legal aid commissions will be allocated between the States and Territories based on the legal aid funding distribution model at Schedule C. The model distributes a fixed pool of Commonwealth legal aid funding across the States and Territories. It uses objective measures such as

population size, demographic characteristics and socio-economic variables to provide an equitable distribution based on the incidence and risk of disadvantage.

31. The funding figures represent fixed base amounts for 2010-11 with an indexation adjustment factor (Wage Cost Index Number 1) to be applied annually in subsequent years. The distribution of legal aid funding across the States and Territories will be indexed accordingly, but will otherwise remain unchanged for the period of this Agreement.
32. The Commonwealth's funding for legal aid services, including through National Partnership payments to the States and Territories paid in accordance with *Schedule D – Payment Arrangements* of the Intergovernmental Agreement on Federal Financial Relations, are shown in Table 1.

Estimated Commonwealth funding

Table 1: Legal Aid Services

\$ million	2010-11	2011-12	2012-13	2013-14
NSW	60.280	61.599	62.647	63.744
VIC	42.415	43.644	44.387	45.165
QLD	40.058	40.484	41.173	41.894
WA	19.212	19.583	19.916	20.265
SA	14.946	15.434	15.696	15.971
TAS	5.736	5.836	5.935	6.039
ACT	4.291	4.355	4.421	4.491
NT	3.860	3.850	3.908	3.970
National	3.389	3.502	3.568	3.693
Total	194.186	198.287	201.651	205.233

33. Commonwealth legal aid services funding will be used only for Commonwealth law matters except:
- for the provision of early intervention legal education, information, advice, assistance and advocacy services, and
 - legal representation of individuals whose legal problems involve a mixture of Commonwealth family law issues and State or Territory law family violence and/or child protection issues as described in the Commonwealth legal aid services priorities in Schedule A.

Payment schedule

34. The Commonwealth will make quarterly payments to the States and Territories for legal aid work undertaken under this Agreement.

Project management risk

35. Having regard to the agreed estimated costs of delivering Commonwealth legal aid services, a State or Territory will not be required to pay a refund to the Commonwealth if the actual cost of delivering the services is less than the agreed funding provided. Similarly, the States and Territories bear all risk should the costs of delivering the services exceed the agreed funding as set out in the Agreement. The Parties acknowledge that this arrangement provides the maximum incentive for the States and Territories to deliver services cost effectively and efficiently.

PART 6 – GOVERNANCE ARRANGEMENTS

Dispute resolution

36. Any Party may give notice to other Parties of a dispute under this Agreement.
37. Officials of relevant Parties will attempt to resolve any dispute in the first instance.
38. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers.
39. If a dispute cannot be resolved by the relevant Ministers, it may be referred by a Party to COAG for consideration.

Review of the Agreement

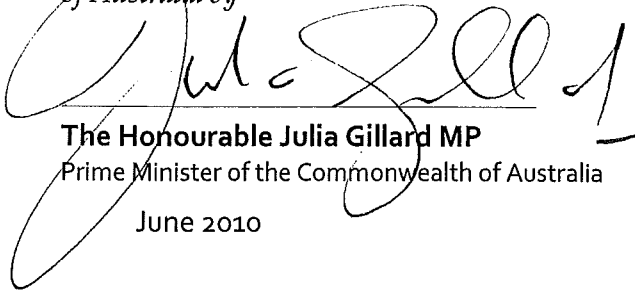
40. The Agreement will be reviewed by 30 June 2013 with regard to progress made by the Parties in respect of achieving the agreed outcomes, objectives and outputs.

Variation of the Agreement

41. The Agreement may be amended at any time by agreement in writing by all the Parties and under terms and conditions as agreed by all the Parties.
42. A Party to the Agreement may terminate their participation in the Agreement at any time by providing all the other Parties with 12 months notice, in writing, of their intention to terminate their participation.

The Parties have confirmed their commitment to this agreement as follows:

*Signed for and on behalf of the Commonwealth
of Australia by*



The Honourable Julia Gillard MP
Prime Minister of the Commonwealth of Australia

June 2010

*Signed for and on behalf of the
State of New South Wales by*

The Honourable Kristina Keneally MP
Premier of the State of New South Wales

June 2010

*Signed for and on behalf of the
State of Queensland by*

The Honourable Anna Bligh MP
Premier of the State of Queensland

June 2010

*Signed for and on behalf of the
State of South Australia by*

The Honourable Mike Rann MP
Premier of the State of South Australia

June 2010

*Signed for and on behalf of the Australian
Capital Territory by*

Mr Jon Stanhope MLA
Chief Minister of the Australian Capital Territory

June 2010

*Signed for and on behalf of the
State of Victoria by*

The Honourable John Brumby MP
Premier of the State of Victoria

June 2010

*Signed for and on behalf of the
State of Western Australia by*

The Honourable Colin Barnett MP
Premier of the State of Western Australia

June 2010

*Signed for and on behalf of the
State of Tasmania by*

The Honourable David Bartlett MP
Premier of the State of Tasmania

June 2010

*Signed for and on behalf of the Northern
Territory by*

The Honourable Paul Henderson MLA
Chief Minister of the Northern Territory of Australia

June 2010

The Parties have confirmed their commitment to this agreement as follows:

Signed for and on behalf of the Commonwealth of Australia by

The Honourable Julia Gillard MP
Prime Minister of the Commonwealth of Australia

June 2010

Signed for and on behalf of the State of New South Wales by

The Honourable Kristina Keneally MP
Premier of the State of New South Wales

June 2010

Signed for and on behalf of the State of Victoria by

The Honourable John Brumby MP
Premier of the State of Victoria

June 2010

Signed for and on behalf of the State of Queensland by

The Honourable Anna Bligh MP
Premier of the State of Queensland

June 2010

Signed for and on behalf of the State of Western Australia by

The Honourable Colin Barnett MP
Premier of the State of Western Australia

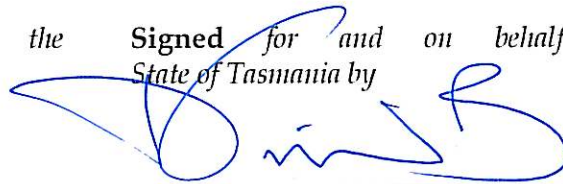
June 2010

Signed for and on behalf of the State of South Australia by

The Honourable Mike Rann MP
Premier of the State of South Australia

June 2010

Signed for and on behalf of the State of Tasmania by



The Honourable David Bartlett MP
Premier of the State of Tasmania

June 2010

Signed for and on behalf of the Australian Capital Territory by

Mr Jon Stanhope MLA
Chief Minister of the Australian Capital Territory

June 2010

Signed for and on behalf of the Northern Territory by

The Honourable Paul Henderson MLA
Chief Minister of the Northern Territory of Australia

June 2010

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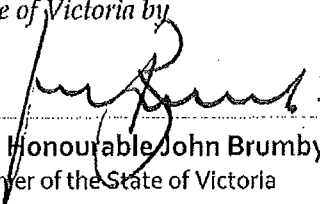
Signed for and on behalf of the Commonwealth of Australia by

The Honourable Julia Gillard MP
Prime Minister of the Commonwealth of Australia
June 2010

Signed for and on behalf of the State of New South Wales by

The Honourable Kristina Keneally MP
Premier of the State of New South Wales
June 2010

Signed for and on behalf of the State of Victoria by

The Honourable John Brumby MP
Premier of the State of Victoria

29 June 2010

Signed for and on behalf of the State of Queensland by

The Honourable Anna Bligh MP
Premier of the State of Queensland
June 2010

Signed for and on behalf of the State of Western Australia by

The Honourable Colin Barnett MP
Premier of the State of Western Australia
June 2010

Signed for and on behalf of the State of South Australia by

The Honourable Mike Rann MP
Premier of the State of South Australia
June 2010

Signed for and on behalf of the State of Tasmania by

The Honourable David Bartlett MP
Premier of the State of Tasmania
June 2010

Signed for and on behalf of the Australian Capital Territory by

Mr Jon Stanhope MLA
Chief Minister of the Australian Capital Territory
June 2010

Signed for and on behalf of the Northern Territory by

The Honourable Paul Henderson MLA
Chief Minister of the Northern Territory of Australia
June 2010

The Parties have confirmed their commitment to this agreement as follows:

Signed for and on behalf of the Commonwealth of Australia by

The Honourable Julia Gillard MP
Prime Minister of the Commonwealth of Australia

June 2010

Signed for and on behalf of the State of New South Wales by

The Honourable Kristina Keneally MP
Premier of the State of New South Wales

June 2010

Signed for and on behalf of the State of Victoria by

The Honourable John Brumby MP
Premier of the State of Victoria

June 2010

Signed for and on behalf of the State of Queensland by

The Honourable Anna Bligh MP
Premier of the State of Queensland

June 2010

Signed for and on behalf of the State of Western Australia by

The Honourable Colin Barnett MP
Premier of the State of Western Australia

June 2010

Signed for and on behalf of the State of South Australia by

The Honourable Mike Rann MP
Premier of the State of South Australia

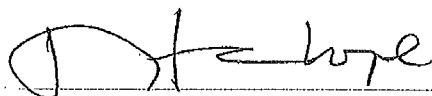
June 2010

Signed for and on behalf of the State of Tasmania by

The Honourable David Bartlett MP
Premier of the State of Tasmania

June 2010

Signed for and on behalf of the Australian Capital Territory by



Mr Jon Stanhope MLA
Chief Minister of the Australian Capital Territory

28 June 2010

Signed for and on behalf of the Northern Territory by

The Honourable Paul Henderson MLA
Chief Minister of the Northern Territory of Australia

June 2010

The Parties have confirmed their commitment to this agreement as follows:

Signed for and on behalf of the Commonwealth of Australia by

The Honourable Julia Gillard MP
Prime Minister of the Commonwealth of Australia
June 2010

Signed for and on behalf of the State of New South Wales by

The Honourable Kristina Keneally MP
Premier of the State of New South Wales
June 2010

Signed for and on behalf of the State of Victoria by

The Honourable John Brumby MP
Premier of the State of Victoria
June 2010

Signed for and on behalf of the State of Queensland by

The Honourable Anna Bligh MP
Premier of the State of Queensland
15 ^{July} June 2010

Signed for and on behalf of the State of Western Australia by

The Honourable Colin Barnett MP
Premier of the State of Western Australia
June 2010

Signed for and on behalf of the State of South Australia by

The Honourable Mike Rann MP
Premier of the State of South Australia
June 2010

Signed for and on behalf of the State of Tasmania by

The Honourable David Bartlett MP
Premier of the State of Tasmania
June 2010

Signed for and on behalf of the Australian Capital Territory by

Mr Jon Stanhope MLA
Chief Minister of the Australian Capital Territory
June 2010

Signed for and on behalf of the Northern Territory by

The Honourable Paul Henderson MLA
Chief Minister of the Northern Territory of Australia
June 2010

The Parties have confirmed their commitment to this agreement as follows:

Signed for and on behalf of the Commonwealth of Australia by

The Honourable Julia Gillard MP
Prime Minister of the Commonwealth of Australia
June 2010

Signed for and on behalf of the State of New South Wales by

The Honourable Kristina Keneally MP
Premier of the State of New South Wales
June 2010

Signed for and on behalf of the State of Victoria by

The Honourable John Brumby MP
Premier of the State of Victoria
June 2010

Signed for and on behalf of the State of Queensland by

The Honourable Anna Bligh MP
Premier of the State of Queensland
June 2010

Signed for and on behalf of the State of Western Australia by



The Honourable Colin Barnett MP
Premier of the State of Western Australia
June 2010

Signed for and on behalf of the State of South Australia by

The Honourable Mike Rann MP
Premier of the State of South Australia
June 2010

Signed for and on behalf of the State of Tasmania by

The Honourable David Bartlett MP
Premier of the State of Tasmania
June 2010

Signed for and on behalf of the Australian Capital Territory by

Mr Jon Stanhope MLA
Chief Minister of the Australian Capital Territory
June 2010

Signed for and on behalf of the Northern Territory by

The Honourable Paul Henderson MLA
Chief Minister of the Northern Territory of Australia
June 2010

National Partnership Agreement on Legal Assistance Services

The Parties have confirmed their commitment to this agreement as follows:

Signed for and on behalf of the Commonwealth of Australia by

The Honourable Kevin Rudd MP
Prime Minister of the Commonwealth of Australia
June 2010

Signed for and on behalf of the State of New South Wales by

The Honourable Kristina Keneally MP
Premier of the State of New South Wales
June 2010

Signed for and on behalf of the State of Victoria by

The Honourable John Brumby MP
Premier of the State of Victoria
June 2010

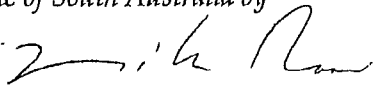
Signed for and on behalf of the State of Queensland by

The Honourable Anna Bligh MP
Premier of the State of Queensland
June 2010

Signed for and on behalf of the State of Western Australia by

The Honourable Colin Barnett MP
Premier of the State of Western Australia
June 2010

Signed for and on behalf of the State of South Australia by



The Honourable Mike Rann MP
Premier of the State of South Australia
June 2010 *19th July, 2010*

Signed for and on behalf of the State of Tasmania by

The Honourable David Bartlett MP
Premier of the State of Tasmania
June 2010

Signed for and on behalf of the Australian Capital Territory by

Mr Jon Stanhope MLA
Chief Minister of the Australian Capital Territory
June 2010

Signed for and on behalf of the Northern Territory by

The Honourable Paul Henderson MLA
Chief Minister of the Northern Territory of Australia
June 2010

Schedule A

COMMONWEALTH LEGAL AID SERVICE PRIORITIES

General principles and priorities are outlined for Commonwealth law matter types and special circumstances of the applicant are intended to provide guidance to the States and Territories about the types of legal matters that should attract Commonwealth funded legal services. The priorities are not exhaustive and may be subject to amendment from time to time as set out in clause 28 (e) of the Agreement.

General Principles to be applied to each priority

- Consideration should be given in all cases to what other services (non-legal as well as legal) may be relevant to a client's needs and the appropriateness of referral.
- Services directed to a case should, where appropriate, focus on resolution of the matter through the use of preventative, early intervention or dispute resolution services rather than litigation.
- The provision of all preventative and early intervention legal education, information, advice, assistance and advocacy services are considered a Commonwealth legal aid service priority regardless of whether the matter type comes within Commonwealth or State/Territory law.
- The priorities for family law matters relate to complex issues and fundamental matters necessary for the wellbeing of children and/or people who have experienced, are experiencing or are at risk of experiencing, family violence. The priorities are not intended to include grants of legal aid for matters such as matrimonial divorce proceedings, applications for passport, change of name applications, unless special circumstances apply.
- The priorities for family law, criminal law, civil law and special circumstances of the applicant outlined below are not listed in any hierarchical order.

Family law priorities

- Family law matters that involve a grant of legal aid being provided to assist:
 - children, including the appointment of a court appointed independent children's lawyer
 - people who have experienced, are experiencing or are at risk of experiencing, family violence, and
 - family members resolve complex issues relating to the living arrangements, relationships and financial support of their children.
- State law matters in which a child's safety or welfare is at risk and there are other connected family law priorities for which a grant of legal assistance could be made.
- State law matters where the applicant's safety is at risk and there are other connected family law priorities for which a grant of legal assistance could be made.

Criminal law priorities

- Commonwealth criminal law matters that involve a grant of legal aid being provided to assist people facing Commonwealth criminal offences or undergoing Commonwealth criminal proceedings where the defendant is:
 - a child, or
 - a person who, if convicted, is likely to receive a sentence involving a period of imprisonment.

Note: Legal aid commissions may apply for reimbursement of one-off costs associated with providing assistance for a particular criminal law matter from the Commonwealth Criminal Law – Expensive Cases Fund administered by the Commonwealth Attorney-General's Department.

Civil law priorities

- Commonwealth civil law matters that involve a grant of legal aid being provided for:
 - (a) assistance to war veterans under the War Veterans Legal Aid Scheme
 - (b) matters relating to social security and other Commonwealth benefits
 - (c) migration matters where assistance is not available from services funded by the Department of Immigration and Citizenship
 - (d) Commonwealth employment, equal opportunity and discrimination cases
 - (e) Commonwealth consumer law matters
 - (f) matters arising under the *Proceeds of Crime Act 2002*
 - (g) proceedings under section 19 or 21 of the *Extradition Act 1988*.

Special circumstances of the applicant priorities

- Cases requiring a grant of aid involving special circumstances such as a language or literacy problem, intellectual, psychiatric or physical disability; a person's remote locality making it difficult to obtain legal assistance or where the person would otherwise be at risk of social exclusion.
- Cases requiring a grant of aid where the applicant is a child or the applicant is appointed under the *Crimes Act, 1914* to question a child complainant or child witness, should be considered a priority.

PRINCIPLES FOR ASSESSING ELIGIBILITY FOR A GRANT OF LEGAL AID

Assessing financial eligibility for a grant of legal aid

The following key principles relating to financial eligibility will be applied in assessing applications for grants of legal aid in Commonwealth law matters (the means test):

Where a person receives the maximum rate of an income support payment or benefit administered by Centrelink as their total income, that person will be taken to satisfy the income component of the means test.

Where a person does not receive the maximum rate of an income support payment or benefit administered by Centrelink, the person's income will be determined by making deductions from their total income in relation to objectively referenced costs of housing and providing support to dependents and measured against a nationally standardised income threshold.

A person who does not initially satisfy the income component of the means test but who is still unable to afford private legal representation may still be eligible for legal aid, on the condition that a contribution towards the person's legal costs is paid to the legal aid commission. The level of contribution will be based on a sliding scale that takes into account the likely cost of the matter. Where the contribution imposed exceeds the estimated cost of the matter, assistance will be refused because it will be assumed that the applicant is able to pay for private legal representation.

A person may hold some assets and still be eligible for a grant of legal aid. An assets test component will include allowable exemptions such as the equity in the applicant's principal place of residence, equity in a used motor vehicle and household furniture that are based on nationally standardised asset thresholds.

A person who does not initially satisfy the assets component of the financial eligibility test may still be eligible for legal aid in limited circumstances, if they cannot reasonably be expected to borrow against their assets. This may, for example, apply to age or disability pensioners with significant equity in a residential property. In these cases, a legal aid commission has the discretion to determine whether it is appropriate in the circumstances to impose a client contribution and/or secure a charge over the property, to allow recovery of the contribution upon sale or transfer of the property.

Note: Nationally standardised thresholds for allowable income and assets may be determined by a standard set of factors

Applicants for grants of legal aid under the War Veterans Legal Aid Scheme are exempt from the means test.

COMMONWEALTH LEGAL AID FUNDING MODEL

The new Commonwealth legal aid funding model ('the model') refines the model that was used to distribute Commonwealth legal aid funds for the 2004-08 legal aid agreements.

The model does not determine the quantum of the funding pool. The model uses objective measures such as population size, demographic characteristics and socio-economic variables to provide an indicative distribution for Commonwealth legal aid funding across the States and Territories.

The model distributes funds according to the size of the resident population in the State or Territory, adjusted for numerous factors and variables and is designed to be reviewed periodically to incorporate new data from the Australian Bureau of Statistics (ABS), the Commonwealth Grants Commission (CGC) and Centrelink.

The significant driver of the model is the 'risk factor' which is calculated separately for males and females. The 'risk factor' assesses potential demand for legal aid services using indicators that focus on population characteristics which occur frequently in the legal aid target group: Single Parent Payment Recipients, Divorces Involving Children and the ABS Index of Relative Socio-Economic Disadvantage (a generic disadvantage factor based on 17 different variables).

CGC weightings are also applied to reflect the differences in costs between jurisdictions (eg higher costs in less populous jurisdictions) and differences in socio-economic composition. The approach used to update the model is broadly based on the methodology used by the CGC. The model, therefore, provides an objective measurement of relative need for funding between the States and Territories using data from highly reliable sources.

The new model removes the cost per case factor used in the previous model. The model now uses the CGC input costs disability factor, which compensates commissions in States and Territories that have higher per capita cost of wages, accommodation and electricity. Reliance on historical data provided by commissions has been removed and replaced by independent and relevant socio-demographic variables as outlined above.

The new model reflects greater flexibility with respect to early intervention and prevention legal services. It allows for Commonwealth funds to be used for family and domestic violence and child protection matters.