

John Corbell

New South Wales Government



Attorney General's Department

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26 Feb 1992

Dear Mr Tedder

The Attorney General has asked me to reply to your letter concerning the availability of legal aid in environmental matters.

Contrary to the Council's understanding, the Legal Aid Commission has not been directed to cut legal aid funding in environmental matters. The Legal Aid Commission has been asked to make savings in line with budget measures being taken across the entire public sector. The Commission is expected to achieve savings of \$2.9 million. However, discussions have been held with the Law Society to ensure that any shortfall in funds for legal aid will be met from the Statutory Interest Account which comprises interest from solicitors' trust account moneys deposited with the Law Society. The net effect will be that the current level of funding for legal aid will remain unchanged.

Earlier this year a Ministerial Advisory Committee was established to investigate the use of legal aid in environmental matters. The Committee has now examined the maximum use that can be made of the limited legal aid money available in order to ensure the fair allocation of aid resources between competing areas of demand for legal aid services, and has recommended that there be no change in present levels of funding in environmental matters. I support the Committee's decision.

I also note that the Commission has reviewed its policies relating to the availability of legal aid for environmental matters and adopted comprehensive new policies which have applied since 1 July 1991.

The new policies ensure the continued availability of legal aid for environmental matters subject to the Commission's merit test, means test and certain guidelines. The guidelines include factors that are taken into account in determining whether or not legal aid should be made available such as the existence of a substantial public interest, the likely cost to the Commission of the proceedings and the availability of financial support from those members of the community who would be likely to support the aims of a group seeking a grant of aid.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'A. Macgillivray'.

for Director General

SUBMISSION BY

ENVIRONMENTAL DEFENDER'S OFFICE LTD (NSW)
ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.
ENVIRONMENT DEFENDERS OFFICE LTD (VIC)
ENVIRONMENTAL LAW COMMUNITY ADVISORY
SERVICE (SA) INC.

Steering Committees for the establishment of EDOs in Western
Australia, Tasmania, Northern Territory and the ACT.

To the Access to Justice Action Plan

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8 August 1994

EXECUTIVE SUMMARY

In environmental issues, there is serious inequality in access to justice between private or government interests and persons or groups seeking to protect the public interest. Private or government interests are well resourced and have access to legal advice and representation whilst protectors of the public interest have no or limited access to legal advice and representation.

The effect of this imbalance on decision making is that solutions to environmental problems do not reflect detailed consideration of all interests and are predestined to be inadequate.

The government should implement three reforms to begin to address this imbalance. They are –

1. THE ESTABLISHMENT OF ENVIRONMENTAL DEFENDER'S OFFICES

1.1 NEED

Environmental Defender's Offices perform three functions – legal advice and litigation, law reform and community legal education in public interest environmental law.

The NSW EDO is the only full time office in Australia. Other states and territories have no or very limited access to these services.

Inquiries received by existing offices show that the community has a changing expectation about its role in environmental protection as a result of the increasing seriousness of environmental problems and initiatives to implement the principles of ecologically sustainable development. The community is demanding greater involvement in environmental decision making.

These demands are leading to the creation of new rights and responsibilities in environmental laws.

There is significant unmet need for legal advice and community education about rights of the public to participate in decision making processes and for the on-going formulation of participatory environmental laws.

There is a need for EDOs in all states and territories and not only in some states. To perpetuate the imbalance is to imply there is a greater need for environmental protection in some states than in others.

1.2. MEETING THE NEED

Over the next three years, the Commonwealth should provide funding to be administered by the Attorney General's Department, for the following purposes –

1. To bring the services provided by the Queensland, Victorian and South Australian offices up to a minimum standard of service.
2. To commence the establishment and operation of Environmental Defender's Offices in Western Australia, Tasmania, the Northern Territory, and the ACT.
3. To enable members of the NSW EDO to assist and co-ordinate each of the new EDOs in their establishment, and for initial national co-ordination of EDOs once established.

Recurrent funding of up to \$96000 is sought for all states and territories except NSW. That amount is equivalent to the core grant received by EDO NSW and is based on the established community centres funding formula for two positions.

Capital funding of \$30000 is sought for South Australia, Western Australia, Tasmania, the Northern Territory, and the ACT.

Total Funding Sought

First year	Capital	\$150,000
	Recurrent	\$412,000
	EDO NSW	\$31,000
Second year	Recurrent	\$604,000
Third year	Recurrent	\$604,000
TOTAL FUNDING		\$1,801,000

2. LEGAL AID FOR ENVIRONMENTAL CASES

2.1 NEED

Legal aid enables the remedying of serious breaches of environmental laws and the conduct of test cases.

Legal aid for environmental cases enables on-going advice and representation of community interests in particular environmental disputes. On-going representation is required to allow negotiation on an issue, with litigation being a matter of last resort.

Legal aid is necessary because, as shown by the NSW EDO experience, the core grant allocated to a community legal centre permits no more than initial legal advice on particular issues.

Legal aid for environmental cases is only available in New South Wales. In other states LACs have no guidelines for the provision of legal aid in environmental cases. There are commonwealth guidelines for legal aid in matters of national significance.

There is a need for legal aid funding to enable members of the public to exercise the public rights provided in environmental legislation.

The public's ability to pursue litigation is also discouraged by cost indemnity rules.

It is an unacceptable requirement that public interest litigants have to undertake the risk of personal financial loss whilst the benefit of enforcement of public environmental rights flows to the broader community and is not specific to the individual litigant. The conduct of the litigation also involves voluntary donation of enormous personal time.

There is a need for special costs provisions in public interest environmental litigation.

2.2 MEETING THE NEED

The Commonwealth should –

1. Recommend that state LACs provide legal aid for environmental cases.

In its national plan for priorities for legal aid, the Commonwealth should identify public interest environmental cases as an area of law in respect of which LACs are to provide legal aid.

Guidelines for legal aid in public interest environmental cases should recognise the special needs of environmental cases and waive any requirements for a means test. Appropriate precedents are Section 35 of the Legal Aid Commission Act 1979 (NSW) and the NSW LAC legal aid guidelines in public interest environmental cases.

2. Provide funding to state LACs for legal aid in environmental cases.

The Commonwealth should provide increased funding to LACs by way of tied grants for public interest environmental cases.

LACs in Queensland, Victoria, SA and WA should each receive \$200 000 additional funding each year for the next three years.

The NSW LAC should receive \$100 000 additional funding in the first year and \$150 000 in the second and third years.

Tasmania and the Northern Territory should each receive \$100 000 additional funding in the first year and \$200 000 each in the second and third years.

The ACT should receive \$40 000 additional funding in the second and third years.

Total moneys that the Commonwealth should provide are set out below:-

First Year	QLD, VIC, SA, WA	\$800 000
	NSW	\$100 000
	TAS, NT	\$200 000
Second Year	QLD, VIC, SA, WA, TAS, NT	\$1 200 00
	NSW	\$150 000
	ACT	\$40 000
Third Year	QLD, VIC, SA, WA, TAS, NT	\$1 200 000
	NSW	\$150 000
	ACT	\$40.000
Total additional funding		\$3 880 000

3. Amend Commonwealth legislation to provide for cost indemnities and costs orders in public interest environmental litigation.
4. Recommend that state legislation be amended to provide for cost indemnities and costs orders in public interest environmental litigation.

Courts should have the power to make an order that another party to proceedings indemnify the applicant in relation to costs incurred in an application, or that a party only bear its own costs to the proceedings regardless of the outcome of proceedings. An appropriate provision would be Section 49 Judicial Review Act 1991 (QLD). In making such an order the Court should consider whether the proceedings are being brought in the public interest.

Criteria for identifying whether a matter is in the public interest should be listed. Reference can be made to guidelines of the NSW LAC in determining appropriate criteria.

Similarly, there should be provisions for costs indemnities as exist under Section 47 of the Legal Aid Commission Act 1979 (NSW).

5. Establish an Australian Legal Aid Commission.

The Commission should be an independent body responsible for administering the national legal aid fund.

6. Establish a national legal aid fund for environmental test cases.

A national fund for test cases should have clear criteria for identifying what makes a matter an environmental test case that should be funded by the commonwealth.

Such a fund would complement state legal aid funding, which would remain an important source for environmental representation, as environmental laws are predominantly state based.

3. THIRD PARTY CIVIL ENFORCEMENT

3.1 NEED

Enforcement of environmental laws is primarily the responsibility of government authorities. However, sometimes those authorities do not take proceedings where the law has been broken. That can be due to a lack of resources or commitment to taking appropriate enforcement action.

The failure to enforce environmental laws means that public resources such as air, water, endangered species and heritage are not protected. That leads to frustration, contempt for government and the legal process, and eventually, functional breakdown of the system.

Third party civil enforcement provisions are now recognised by government departments, like the NSW Department of Planning, as essential to the proper administration of the environmental legal system.

The right of any person to remedy or restrain a breach of the Act is a fundamental safeguard of the system's proper processes.

Third party civil enforcement provisions enable resources to be directed to substantive questions of breach of environmental laws and not exhausted on procedural issues.

It is a waste of resources, legal aid or other, to require those seeking to represent environmental interests in environmental proceedings to establish their special interest in doing so. This is particularly so, considering that it is no longer disputed that environmental interests should be represented and count in the decision making process.

There is a need for third party civil enforcement provisions in environmental legislation to ensure that government is accountable.

3.2 MEETING THE NEED

The following proposals advance Action 2.1 of the Action Plan.

The Commonwealth should -

1. Recommend that state legislatures include third party civil enforcement provisions, in the same terms as Section 123 of the Environmental Planning and Assessment Act 1979 (NSW), in all environmental protection legislation.
2. Further recommend that a state environment protection statute include a provision in the same terms as Section 25 of the Environmental Offences and Penalties Act 1989 (NSW) to allow restraint of a breach or threatened breach of any Act where the breach is causing or is likely to cause environmental harm.
3. Amend Commonwealth legislation to include third party civil enforcement provisions, in the same terms as Section 123 of the Environmental Planning and Assessment Act 1979, in the following legislation -

Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984

Australian Heritage Commission Act 1975

Antarctic Marine Living Resources Conservation Act 1981

Antarctic Treaty (Environment Protection) Act 1980

Endangered Species Protection Act 1992

Environment Protection (Impact of Proposals) Act 1974

Environment Protection (Alligator Rivers Region) Act 1974

Environment Protection (Nuclear Codes) Act 1978

Environment Protection (Sea Dumping) Act 1981

Great Barrier Reef Marine Park Act 1975

National Parks and Wildlife Conservation Act 1975

Ozone Protection Act 1989

Protection of the Sea (Discharge of Oil from Ships) Act 1983

River Murray Waters Act 1983

Whale Protection Act 1980

Wildlife Protection (Regulations of Exports and Imports) Act 1982

World Heritage Properties Conservation Act 1983

4. Amend the Environment Protection (Impact of Proposals) Act 1974 to include a provision in the same terms as Section 25 of the Environmental Offences and Penalties Act 1989 (NSW) to allow restraint of a breach or threatened breach of any Act which breach is causing or is likely to cause environmental harm.

5. Amend the Administrative Decisions (Judicial Review) Act 1977 and recommend that state legislatures amend relevant judicial review legislation, to provide that any person may apply for the relief provided in that legislation, where the decision the subject of

review, is causing or is likely to cause environmental harm, or is made in breach of an environmental statute. A list of the statutes can be specified by regulation.

CONCLUSION

These reforms will promote achievement of the objectives of the Access to Justice Action Plan.

The establishment of EDOs will lead to greater equality of access to legal services for persons having legitimate interests to protect, regardless of their place of residence.

Legal aid for environmental cases will meet the need for the Commonwealth to provide resources for legal aid to those who have legitimate interests to protect, and in respect of matters for which there is an increasing demand for legal services.

Third party civil enforcement provisions will enable the Commonwealth to improve access to justice in relation to areas of law within Commonwealth power, and to formulate "best practice" principles for matters affecting access to justice but which require implementation by the States.

If these reforms are implemented government decision making will benefit and there will be costs savings in the long term. That this will happen is supported by the findings of the Fraser Island Commission of Inquiry, into public issue disputes. In May 1991, the Commission reported:-

Effective community involvement may require not only access to information, opportunities to participate and representative participation, but also the expenditure of public funds on financial support for appropriate community organisations to enable them to act within and contribute to, rather than oppose and seek to circumvent, the making and implementation of decisions. The ... Legal Aid Commission already provides some financial support in relation to environmental disputes to the Environmental Defender's Office.

One instinctive reaction to such a proposal is that it will promote disputes and obstruct land and resource use. However, provided that appropriate controls are implemented, public funding should have exactly the opposite result....Effective public participation is likely to improve and expedite the decisions which are made.

Resourcing community interests is necessary to give expression to those community interests and to ensure that outcomes of environmental disputes are determined on merit rather than according to means and that processes set down by law are followed. Otherwise private interests will always dominate, and the expression of the broader public interest will be forever inhibited.

Legal Aid Commission of
New South Wales

LEGAL AID POLICIES

APRIL 1994

This booklet contains general information about the policies of the Legal Aid Commission. To obtain more detailed information, please contact the Policy and Education Branch on (02) 219 5921.

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INFORMATION ABOUT THE LEGAL AID COMMISSION

Advice

The Commission provides general advice to the public at Commission offices, on all matters. Advice is provided free of charge, without application of the means test or merit test. People seeking advice should contact the closest Commission office. A list of the locations of Commission offices appears at p.27.

The Means Test

In most cases, the Commission applies a means test which takes into account an applicant's income and assets. Full details of the Commission's means test, and exempt cases are contained in a separate booklet called "Means Test Guidelines".

The Merit Test

The Commission applies a 'merit test' in most non-criminal matters and in criminal appeals (for further details see policies relating to the relevant area of law, following).

The merit test addresses whether it is reasonable in all the circumstances to grant legal aid. Matters which the Commission takes into account include, but are not limited to,

- (i) the nature and extent of any benefit that may accrue to the applicant by providing legal assistance or of any detriment that the applicant may suffer if legal assistance is refused; and
- (ii) whether the applicant has reasonable prospects of success in the proceedings.

Compulsory and Initial Contributions

In most ongoing cases the Commission requires a contribution of \$40 from a person granted legal aid. Certain cases are exempt. A person granted legal aid may also have to make a further contribution, based on income and assets. Full details of contributions and exempt cases are contained in the separate booklet, "Means Test Guidelines".

Final Contributions

The Commission's policy is that, at the conclusion of the case or the legal aid grant, where possible, the total costs of the matter should be recovered from the person granted legal aid, depending on the person's financial situation.

1. CIVIL LAW MATTERS

(Not including Family Law - see p. 13, Administrative Law - see p. 8, Veterans' Pension Matters - see p. 12, Prisoners' Matters - see p. 21, Mental Health Matters - see p.23.)

For applications for legal aid determined on or after 25 March 1994.

1.1 Matters for which legal aid is available

Legal aid is available for the following matters subject to the means test, merit test, exclusions and guidelines

A. All Applicants

- (a) court or tribunal proceedings at first instance or on appeal
 - (i) where there is a likelihood of loss of the applicant's dwelling
 - (ii) where questions of civil liberties are raised e.g. assault, wrongful arrest, false imprisonment and malicious prosecution, by a person in a special position of authority
 - (iii) under the Protected Estates Act 1983
 - (iv) under the Victims Compensation Act 1987 for applicants
- (b) proceedings before the Equal Opportunity Tribunal and Human Rights and Equal Opportunity Commission and on appeal therefrom
- (c) inquests into deaths where representation is a preliminary step to civil proceedings for which aid is available or where the public interest would be advanced by representation of the applicant
- (d) consumer protection matters for consumers including proceedings
 - (i) relating to guarantees, product liability, wrongful exercise of power by government departments or instrumentalities and tenancy issues (except applications to determine fair rental where no point of law is involved) but not including proceedings for professional negligence
 - (ii) under consumer protection legislation being the
 - Credit Act 1984
 - Fair Trading Act 1987
 - Contracts Review Act 1980
 - Retirement Villages Act 1989
 - Trade Practices Act 1974
 - Insurance Contracts Act 1984 - for contracts of insurance relating to home owners, home contents, motor vehicle property, personal accident/illness and loan protection.
- (e) Public interest environment matters

B. Applicants at Special Disadvantage

Where proceedings are taken by or for the benefit of

- a child or
- a person having difficulty in dealing with the legal system by reason of a psychiatric condition, developmental disability, intellectual impairment or a physical disability

Legal aid is also available for proceedings in

- (a) the Supreme Court of New South Wales including all proceedings in the Court of Appeal, and the District Court of New South Wales except for non contentious proceedings in the probate jurisdiction of the Supreme Court.
 - (i) in relation to appeals to the Supreme Court from decisions of the Guardianship Board, see Mental Health Matters p.21.
 - (ii) in relation to applications for adoption proceedings, custody and access disputes, state law affiliation and maintenance proceedings and property disputes between former de facto partners, see Family Law Policies p.13;
- (b) the Local Court;
- (c) the Federal Court of Australia (see also Administrative Law Policies, p.10 and Veterans' Pensions Policies, p.12);
- (d) the High Court of Australia in its original jurisdiction and appeals to the High Court (see also Administrative Law Policies, p.10 and Veterans' Pensions Policies, p.12);
- (e) the Land and Environment Court in relation to proceedings before a judge;
- (f) the Industrial Commission of New South Wales in relation to proceedings pursuant to section 88F of the Industrial Arbitration Act 1940 [ss275-278 Industrial Relations Act 1991]. Grants of aid in these matters are closely monitored and solicitors are required to report at reasonable stages on the progress of the matter;
- (g) the Industrial Magistrate's Court [Local Court] for recovery of payments owing under section 92D of the Industrial Arbitration Act 1940 [s163 Industrial Relations Act 1991] (where possible these matters are dealt with on an in-house basis);
- (h) Arbitration in respect of:
 - (i) contracts of insurance; and
 - (ii) contracts of construction, maintenance or repair of a structure used or intended to be used entirely as a dwelling house;

- (i) the Commercial Tribunal;
- (j) the Guardianship Board (see Mental Health Policies, p.23); and for
- (k) application for Waiver of Escheat in respect of the estate of deceased persons.

1.2 Exclusions

Except as noted below legal aid is not available for

- (a) disputes arising from commercial or investment transactions conducted by the applicant;
- (b) building disputes;
- (c) assault matters - other than those where questions of civil liberties are raised and claims under the Victims Compensation Act;
- (d) disputes arising from the relationship of the parties as neighbours;
- (e) bankruptcy matters being debtors' petitions, deeds of arrangement, creditors' meetings, public examinations;
- (f) defamation proceedings;
- (g) disputes between family members and former family members over property and money. "Family" includes family resulting from a de factor relationship. This exclusion does not apply to
 - proceedings under the De Facto Relationship Act 1984 or the Family Provision Act 1982; or
 - proceedings where there is a likelihood of loss of the applicant's dwelling arising from an arrangement where by the applicant made a financial contribution to the cost of the dwelling.

The Commission will consider the suitability of family disputes for referral to a Community Justice Centre;

- (h) intra association disputes, for example, between members of unions or clubs;
- (i) proceedings in a Local Court where the amount in issue is \$3,000 or less;
- (j) proceedings to be taken in a Local Court which fall within the jurisdiction of the Consumer Claims Tribunal;
- (k) matters concerning damage to any property by a motor vehicle;
- (l) proceedings under the Proceeds of Crimes Act 1981, Crimes (Confiscation of Profits) Act 1990, Drug Trafficking (Civil Proceedings) Act 1990 and other legislation relating to tainted moneys/property.

Note: Legal aid may be granted in matters (a) - (j) where the applicant is a person at special disadvantage as described in 1.1B and where

- there are exceptional circumstances and
- the applicant would suffer undue hardship if legal aid were refused.

For the purposes of exclusion (a) exceptional circumstances shall be considered to exist where proceedings are being taken against a solicitor alleging professional negligence arising in the course of a commercial or investment transaction.

1.3 Guidelines

(a) Loss of Dwelling

Legal aid is only available where the loss of the applicant's dwelling is a likely direct result of the proceedings for which aid is sought e.g. ejectment proceedings or where it is considered necessary to take proceedings to protect the applicant's interest in the dwelling.

Aid is not available for other matters e.g. claims for debts due where there is a likelihood that the applicant's dwelling may have to be sold to meet a judgment or adverse costs order.

(b) Inquests

In all matters regard will be had to the prospects of the applicant being granted leave to be represented at the inquest.

Where the death to which the inquest relates occurred in the custody of the police, or in a prison, mental hospital, child care centre, community welfare facility or juvenile detention centre questions of public interest will generally be considered to have arisen.

In considering the benefit/detriment aspects of the merit test and the reasonableness of granting legal aid consideration will be given to the applicant's relationship to the deceased and the likelihood of the interests of the deceased's family being represented at the inquest if legal aid were not granted.

(c) Test cases and public interest cases

- (i) Legal aid may be granted for test cases and public interest cases in any of the classes of matters for which legal aid is available.
- (ii) Legal aid is available for public interest environment matters where the activity or proposed undertaking raises a matter of substantial public concern about the environment. In deciding whether there is a substantial public concern, regard will be had to at least the following:
 - Whether or not the activity, or proposed undertaking is likely to have a significant impact on the environment in NSW or to substantially affect public use, or enjoyment of that environment.
 - The scarcity of the particular attribute(s) of that environment.

- The value of that environment to the community of NSW.
- Community interests that may be affected including the impact on the social and cultural needs of the community.

In deciding whether the public interest environment matter has merits as defined in the merits test of the Legal Aid Commission, the environmental, economic, cultural and social impact should be considered, where appropriate.

In the case of matters in the Land and Environment Court or on appeal therefrom the following guidelines apply:

- Legal aid is only available for matters coming within Class 1 and Class 4 of the Land and Environment Court Act 1979.
- Legal aid is not available for proceedings coming within Class 2, 3, and 5 of that Act.
- Legal aid is only available for proceedings proposed to be conducted in the Land and Environment Court before a Judge.

In deciding whether or not to grant legal aid, consideration must be had to the likely cost to the Commission of the proceedings.

Applicants for legal aid and legally assisted persons or groups should, in appropriate cases, be required to pursue settlement of the matter by mediation or negotiation.

Where the application for legal assistance concerns environmental matters which fall within Guidelines 20-24 inclusive, set forth in the guidelines for the provision of legal or financial assistance by the Commonwealth other than under the Conciliation and Arbitration Act (published by the Attorney General's Department in 1989), then the application should be referred to the Commonwealth Attorney General for determination in accordance with the Commonwealth's guidelines for legal aid in environmental matters.

Means Test Guidelines

- The Means Test to be applied to an individual applicant seeking legal aid for an environmental matter is Means Test A.
- Where the applicant seeking legal aid for an environmental matter is a group then the means to be considered are the means of the group.

In considering the means of the applicant/group, regard should be had to the financial support that would be available from those members of the community who would be likely to support the aims of the group in the matter for which aid is sought.

- In considering the means of the applicant/group regard should also be had to the applicant's ability to afford the cost of the legal proceedings having regard to his/her assets or the general assets of the applicant/group.

- Contributions are to be assessed having regard to the available financial resources of the applicant/group.

(d) Motor vehicle accident claims

In respect of matters under the Motor Accidents Act 1988 legal aid is not available by way of grant of aid, section 33 authorisation or minor assistance for the purpose of preparation of a Notice of Claim form. Applications for legal aid will only be considered once entitlement to commence court proceedings arises under section 43 of the Act.

(e) Representation

An application may be determined

- by granting legal aid on condition that a Commission salaried solicitor, a community legal centre or private practitioner conduct the matter - regardless of the source of the application or
- by refusing the application on the basis that representation is available by a community legal centre

if the Commission is satisfied that legal aid will be delivered in the most cost effective manner due to the expertise of Commission salaried solicitors, the community legal centre or the other practitioner in conducting the type of matter to which the application relates.

(f) Lump sum grants

Where appropriate legal aid will be provided on the basis of a lump sum grant to cover professional costs and/or disbursements.

In the case of grants for public interest environment matters, public interest matters, and test cases, a s47 indemnity will apply to the lump sum grant, unless exceptional circumstances exist.

(g) Alternative dispute resolution

Applicants for legal aid and persons to whom legal aid has been granted may be requested or required to participate in alternative dispute resolution under section 33 of the Act or as a condition of the grant of legal aid.

2. ADMINISTRATIVE LAW MATTERS

(Not including Veterans' Pension Matters, see p. 12)

Legal aid is available for the matters listed in 2.1, subject to the means test and merit test, and subject to the guidelines and exceptions listed below.

These matters are to be conducted by salaried solicitors of the Legal Aid Commission unless a salaried solicitor is unable to act or unless exceptional circumstances exist.

2.1 Matters for which legal aid is available

(a) Court or Tribunal proceedings

Legal aid is available for Court or Tribunal proceedings

- in migration matters involving refugee status, physical danger or gross injustice; or
- for review of a criminal deportation order; or
- pursuant to the Social Security Act 1991.

(b) Applications under the Migration Act 1958

Legal Aid is available for assistance with making the following types of applications and for any consequential review

- application for refugee status or associated entry permit; or
- application for entry permit relating to physical danger or gross injustice.

2.2 Guidelines

(a) *Migration Act applications and Social Security Appeals Tribunal proceedings* - where legal aid is granted, the grant should normally be limited to the giving of advice, preparation of written material and cost of expert reports. Where in the opinion of the Commission the applicant is unable to properly represent him/herself, the grant may extend to attendance with the applicant at any interview.

(b) *Social Security Appeals Tribunal proceedings* - legal aid is available only where

- the case relates to a large over-payment; or
- there is significant risk that the applicant will incriminate him/herself; or
- the applicant is unable, by reason of disability, to communicate with the Tribunal; or
- the appeal raises a complex or novel question of law; or
- the applicant cannot afford the cost of medical reports and the applicant's state of health is at issue.

2.3 Exceptions - People eligible to be considered under former policies

Legal aid is available, in accordance with the policies relating to administrative law matters that were in force immediately before 1 January 1993, (see p. 10) where the applicant

- is a child; or
- has a psychiatric condition, developmental disability or intellectual impairment; or
- has a physical disability which creates difficulty in dealing with the legal system.

3. ADMINISTRATIVE LAW MATTERS - policies in force before 1 January 1993 and applicable to applicants falling within exceptions (see p. 9)

3.1 Legal aid is available subject to a means test and merit test for proceedings in:

(a) The Administrative Appeals Tribunal for proceedings under the:

- (i) Social Security Act 1991, Student Assistance Act 1973, National Health Act 1953 and Health Insurance Act 1973;**
- (ii) Migration Act 1958, Passports Act 1938, Australian Citizenship Act 1948 and Regulations;**
- (iii) Veterans' Entitlements Act 1986, Seamen's War Pensions and Allowances Act 1940, Defence Force Retirement and Death Benefits Act 1973 and Defence Service Homes Act 1978;**
- (iv) Commonwealth Employees' Rehabilitation and Compensation Act 1988 and Superannuation Act 1976; and**
- (v) Freedom of Information Act 1981 and Archives Act 1983.**

(b) The Federal Court being:

- (i) Proceedings under Section 39B of the Judiciary Act 1903;**
- (ii) Proceedings under the Administrative Decisions (Judicial Review) Act 1977; and**
- (iii) Appeals from decisions of the Administrative Appeals Tribunal.**

(c) The High Court being appeals arising from proceedings referred to in (a) and (b).

(d) Legal aid is available for proceedings before the Social Security Appeals Tribunal subject to the means test the merit test, and where:

- (i) the case relates to a large over-payment, or**
- (ii) there is a significant risk that the applicant will incriminate him/herself; or**
- (iii) the applicant is unable, by reason of disability, to communicate with the Tribunal; or**
- (iv) the appeal raises complex or novel question of law; or**
- (v) the applicant cannot afford the cost of medical reports and the success of the appeal depends on the state of health of the applicant.**

Where legal aid is granted it should normally be limited to the giving of advice, the preparation of written submissions and the cost of any necessary medical reports.

Where possible these matters are to be dealt with on an in-house basis. Matters will only be assigned to a private legal practitioner where a Commission salaried solicitor is unable to conduct the matter or where there are exceptional circumstances.

Legal aid is available subject to the means test and merit test for the purpose of:

- (e) **Making application to the Department of Immigration, Local Government and Ethnic Affairs for:**
 - (i) **refugee status and permanent residence consequent to the grant of refugee status;**
 - (ii) **permanent residence on strong humanitarian grounds;**
 - (iii) **permanent residence on strong compassionate grounds; and**
 - (iv) **permanent residence on any other grounds provided the application is also on strong humanitarian grounds or strong compassionate grounds.**
- (f) **Seeking reconsideration by any committee, panel or tribunal established to review Departmental decisions to reject any application referred to in (e).**

Legal aid will normally be limited to the giving of advice, the preparation of the application and the preparation of written submissions. Where, in the opinion of the Commission, the applicant is unable to properly represent himself/herself, legal aid may extend to attendance with the applicant at interviews with migration officers.

Where possible these matters are dealt with on an in-house basis. Matters will only be assigned to a private legal practitioner where a Commission salaried solicitor is unable to conduct the matter or where there are exceptional circumstances.

Where an application for legal aid is received in relation to a matter that is not specified in 3.1(a) to (f) but it is considered that the application warrants consideration, the matter will be referred to the General Manager, Legal Services or the Managing Director.

4. VETERANS' PENSION MATTERS

4.1 Legal aid is available to ex service personnel and their dependants for matters under the Veterans' Entitlements Act 1986 and Seamen's War Pensions and Allowances Act 1940 subject to a merit test. No means test applies except in war service pension matters.

- Payments under section 33(f) of the Legal Aid Commission Act 1979 (except as may arise by operation of paragraph 4.2(b) below) and payments under section 46 of the Act are not levied in matters where the means test is not applied.
- Compulsory contributions and other contributions under section 36 of the Act are not levied in matters where the means test is not applied.

4.2 Legal aid is not available:

- (a) until there has been an adverse determination, in the matter for which legal aid is sought, by the Repatriation Commission or the Pensions Committee, as the case may be; or
- (b) in non-psychiatric claims where a finding of no incapacity has been made, unless the applicant furnishes at his or her own expense a medical opinion verifying the existence of the condition alleged; or
- (c) in entitlement matters where the applicant is already in receipt of 100% of the general rate of pension except where the claim is a means to achieving an additional financial benefit.

5. FAMILY LAW MATTERS

(Not including Child Support Scheme Matters - see p. 25)

Legal aid is available for the matters listed in 5.1, subject to the means test and merit test (except where otherwise stated) and the guidelines listed below.

5.1 (a) Family Law Act 1975, Regulations and Rules

- (i) applications for stay and transfer of proceedings;
- (ii) dissolution and nullity of marriage proceedings;
- (iii) custody, guardianship and access proceedings;
- (iv) maintenance proceedings and property proceedings;
- (v) intervention applications;
- (vi) appeals and applications to state a case;
- (vii) contempt proceedings;
- (viii) declarations and injunctions;
- (ix) change of venue applications;
- (x) applications for expedition of proceedings;
- (xi) applications for review of Registrar's decision;
- (xii) Family Court enforcement of maintenance proceedings under Order 33 of the Family Law Rules;
- (xiii) proceedings pursuant to section 111 of the Family Law Act 1975 and under Part IV of the Family Law Regulations to confirm and/or enforce maintenance orders for overseas residents;
- (xiv) preliminary advice to needy persons in remote localities in respect of dissolution proceedings. (The Commission will pay private solicitors to give this advice provided the applicant is more than 50 kilometres from a Family Law Registry, a Commission Branch Office or an advice centre attended by a Commission solicitor. The fee payable is limited to one half hour of professional time at Legal Aid Commission rates.)

(b) Other

- (i) adoption proceedings;
- (ii) conveyancing costs for transfer of proprietary interests in houses pursuant to family law orders and approved agreements between spouses;
- (iii) costs of travel to take delivery of child pursuant to a court order in respect of custody where assistance is not available from another scheme;
- (iv) domestic violence when these proceedings are incidental to family law proceedings;
- (v) proceedings pursuant to the De Facto Relationship Act 1984.

(c) Separate representation and applications under the United Nations Conventions for Recovery Abroad of Maintenance (UNCRAM)

(i) *Separate Representation*

Orders that children be separately represented under the Family Law Act 1975 do not require the submission of an application for legal aid. No means or merit test is applied. The Commission will pay costs and disbursements however, as if the matter were one for which aid has been granted.

(ii) **UNCRAM**

The Managing Director is the delegate of the Collector of Overseas Maintenance and in this capacity acts to recover maintenance from a person or secure variation of an order made by a convention country for payment of maintenance by a person.

In these matters the means and merit tests are not applied and no application for aid is required. The Commission will pay costs and disbursements however, as if the matter were one for which aid has been granted.

5.2 Guidelines

The following guidelines are applied in family law matters:

(a) Dissolution of Marriage

Legal aid is available in respect of applications for dissolution of marriage only where it is imperative that the marriage be dissolved and where the applicant is in a position of special hardship.

(b) Enforcement Proceedings

Legal aid is not available to enforce maintenance orders in the Local Court. Legal aid is available for other types of enforcement proceedings, for example, to enforce the terms of a property settlement order. Where enforcement proceedings involve Family or Supreme Court deliberation, legal aid may be available if it is shown that it is impractical or inappropriate for proceedings to be taken in a Local Court.

(c) Proceedings Pursuant to Part IV of the Family Law Regulations

The Commission co-operates with the Commonwealth in the provision of assistance pursuant to the United Nations Convention on the Recovery Abroad of Maintenance (UNCRAM).

(d) Six Week Separation Guideline (See also 5.2(g)(iii))

Legal assistance for the institution of family law proceedings is generally not available unless or until the parties have been separated for six weeks. However assistance may be available:

- (i) where, in the opinion of the Commission, there are special circumstances in the particular case by reason of which it would be proper to grant such assistance notwithstanding the general policy; or
- (ii) where proceedings within or prior to six weeks of separation are necessary because:
 - there is a real need to obtain injunctive relief;
 - urgent action is required to protect the interests of children;
 - urgent action is required to protect property interests; or
 - urgent maintenance proceedings are required.

(e) Mediation

- (i) Applicants for legal aid will be required to participate in mediation prior to grants of legal aid being made, subject to the suitability of the applicant or the dispute for mediation. This requirement is to be in the form of an authorisation under s33 for referral to mediation.
- (ii) It is **not** considered appropriate to refer the following matters for mediation:
 - where there is an allegation of sexual abuse of a child or other abuse of a child;
 - where DOCS is involved in some other allegation of neglect against a child;
 - where there is a history, which is current, of domestic violence;
 - where the application relates to pending proceedings and the next return date is before mediation can be arranged, and an adjournment is unlikely to be granted;
 - where the matter is urgent and it is necessary to approach a court on an interim relief basis;
 - where recently, but prior to making the application for aid, the parties unsuccessfully attempted mediation or family counselling;
 - where there is documentary or other clear evidence establishing the refusal or unwillingness of the other party to attend mediation; or
 - where there is a denial of paternity.

(f) Custody and Access

- (i) In the case of custody and access disputes, legal aid is usually limited to negotiations with a view to settlement of the dispute. If the negotiations are unsuccessful, a request for further assistance should be made. Such further assistance should be granted if there has been a genuine attempt to settle the matter by agreement.

(g) Property

- (i) Legal aid will not be provided for a property dispute (unless exceptional circumstances exist) where it is likely that:
 - there will be a sale of the matrimonial property; or
 - the other party will purchase the applicant's interest in the matrimonial property; or
 - the applicant will receive a cash settlement;
 resulting in the applicant receiving sufficient funds to pay the anticipated legal costs of the proceedings; or where it is likely that

- the applicant will be in a position to borrow funds sufficient to purchase the other party's interest in the property and pay the anticipated legal costs of the proceedings.

- (ii) In the case of family law property disputes legal aid will not be available until the parties have been separated continuously for a period exceeding three months, except in urgent cases.
- (iii) in determining applications for legal aid in property proceedings, the Commission will weigh the anticipated benefit to the legally assisted person against the likely cost of the proceedings and in doing so shall bear in mind the Commission's policy relating to the application of s46 of the Act (see "Final Contributions", p.1).

(h) Maintenance Proceedings

- (i) In the case of family law maintenance proceedings legal aid is usually limited to negotiations with a view to settlement of the dispute. If the negotiations are successful, a request for further assistance should be made. Such further assistance should be granted if there has been a genuine attempt to settle the matter by agreement.
- (ii) Legal aid is available to commence maintenance proceedings in the Local Court only, unless exceptional circumstances exist.
- (iii) Legal aid is available for a review by the court pursuant to the Child Support (Assessment) Act 1989.

(i) Injunctions

Legal aid is not available where the purpose of the injunctive relief sought is to allow overseas travel or holidays, unless there are cogent reasons for a grant of legal aid and there would be undue hardship to the applicant if legal aid were refused.

(j) Forum for De Facto relationship Act proceedings

De Facto Relationships Act matters should proceed in the Family Court where appropriate, for example, where there are other proceedings in the Family Court relating to children.

5.3 Duty Solicitor Service

The duty solicitor service provided by Commission salaried solicitors in Family Law Act and associated matters at Local Courts and Family Courts is subject to the means test, except where the applicant is in custody, but not the merit test and is limited to:

- (a) legal advice in respect of a first appearance; and/or
- (b) a first appearance on behalf of the client, ordinarily involving an application for an adjournment.

6. CRIMINAL LAW MATTERS

6.1 Legal aid is available for criminal law proceedings as follows:

(a) In the Local Court (subject to the means test but not the merit test) for:

- (i)** bail applications (for persons in custody on the first appearance the means test is not applied);
- (ii)** mentions and adjournments;
- (iii)** pleas of guilty in summary charge matters;
- (iv)** defended summary charge matters;
- (v)** defended indictable charge matters which may be dealt with summarily;
- (vi)** coronial inquests where the applicant for legal aid is summonsed to appear but not charged by the police, if he/she is at risk of being charged with a serious criminal offence;
- (vii)** committal proceedings where the applicant is charged with murder or where exceptional circumstances exist;
- (viii)** domestic violence proceedings whether commenced by private information or police charge being proceedings under Part 15A of the Crimes Act 1900 (Apprehended Violence Orders),
 - to complainants and informants where the complainant/informant
 - is or has been married to the defendant;
 - is living or has lived with the defendant on a bona fide domestic basis although not married;
 - is living with or has lived ordinarily in the same household as the defendant (otherwise than merely as a tenant or boarder);
 - is or has been a relative (within the meaning of s4(6) of the Crimes Act 1900) of the defendant;
 - has or has had an intimate personal relationship with the defendant.
 - to defendants only where exceptional circumstances exist. Exceptional circumstances may include, but are not limited to matters in which it is likely that a gaol sentence will be imposed or where it is likely the matter could be resolved by negotiation.

Legal aid *is* available to defendants for bail applications in the course of apprehended violence proceedings.

- (ix)** summons matters (other than domestic violence proceedings) only in the following circumstances:

- for defendants where
 - there is a real possibility of a gaol sentence being imposed; or
 - the matter would ordinarily have proceeded by way of a charge; or
 - exceptional circumstances exist.
 - for informants where
 - there is a real or anticipated danger to his/her person or kin; or
 - exceptional circumstances exist.
- (x) extradition proceedings, except that where the proceedings are defended, consideration must be given as to whether it is reasonable in all the circumstances to grant legal aid.
- (xi) offences under s4E, s4F and s5 of the Motor Traffic Act 1909, (PCA, DUI, Refuse/Hinder Breath Test etc) and concurrent traffic offences, only where there is a real possibility of a gaol sentence being imposed, if the applicant were convicted. This policy applies to all such proceedings, whether commenced by charge or summons.

(b) Indictable Matters In the District and Supreme Courts

- (i) are subject to the means test but not the merit test for:
- bail applications (except Supreme Court bail applications - see (ii) below)
 - mentions and adjournments;
 - sentence matters including breaches of recognisance;
 - related summary matters dealt with under Pt 10, Criminal Procedure Act 1986; and
 - trials;
- (ii) are subject to the means and the merit test for:
- Supreme Court bail applications.

(c) Appeals, subject to the means test and the merit test, to the:

- (i) District Court sitting in its criminal jurisdiction and Supreme Court, from decisions of Magistrates in Local Courts, other than appeals in matters where legal aid would not have been available for the Local Court proceedings (see 6.1(a));
- (ii) Court of Criminal Appeal; and
- (iii) High Court.

(d) Public Health (Proclaimed Diseases) Amendment Act 1989 for persons subject to Public Health Orders in:

- (i) Local Court and Supreme Court applications subject to the means and merit test and having regard to the nature of the order sought; and**
- (ii) Appeals to the Supreme Court and Court of Appeal from decisions of the Local Court or Supreme Court concerning Public Health Orders under the Act.**

Applications for legal aid for assistance in Public Health Order matters are only to be determined by the Managing Director or General Manager, Legal Services.

6.2 Exclusions

Legal Aid is not available for

- (a) respondents in Victims Compensation matters in the Local, District, or Supreme Court, or the Victims Compensation Tribunal.**
- (b) proceeds of Crime Act 1987 (Commonwealth), Confiscation of Proceeds of Crime Act 1989, Drug Trafficking (Civil proceedings) Act 1990 and other legislation related to tainted monies/property.**

7. CHILDREN'S COURT MATTERS

7.1 Legal aid is available in relation to Children's Court matters as follows:

- (a) in the Children's Court to:
 - (i) children, not subject to a merit test or means test; and
 - (ii) parents, guardians or people with a special interest in the welfare of the child, subject to the means test. The merit test is also applied in respect of:
 - proceedings concerning irretrievable breakdown between a parent and a child; and
 - applications for variation or rescission of orders made under the Children (Care and Protection) Act 1987.
- (b) for Appeals to the District Court from a Magistrate's decision
 - (i) for children, subject to a merit test, and in criminal matters, subject also to a means test
 - (ii) for parents, guardians or people with a special interest in the child subject to a means and merit test
- (c) for committal proceedings subject to a means test, a merit test is not applied;
- (d) for sentence matters and trials in the District Court and Supreme Court subject to a means test but not subject to a merit test;
- (e) for Court of Criminal Appeal and High Court matters subject to a means and merit test.
- (f) in the Community Welfare Appeals Tribunal for proceedings relating to wardship or custody of a ward and for proceedings relating to applications by individuals to be foster parents to:
 - (i) adults, subject to a means and merit test; and
 - (ii) children, where an order for separate representation has been made, subject to a merit test but not a means test.

Representation in the Community Welfare Appeals Tribunal should be by salaried staff of the Commission's Family Law Litigation Section, unless exceptional circumstances exist.
- (g) in the Supreme Court (including proceedings in the Court of Appeal) for appeals from decisions of the Community Welfare Appeals Tribunal relating to wardship or custody of a ward or relating to applications by individuals to be foster parents, to:
 - (i) adults, subject to a means and merit test; and
 - (ii) children subject to a merit test.

8. PRISONERS' MATTERS

8.1 Since February 1986, the Commission has provided services to prisoners through the Prisoners' Legal Service (PLS) which is located on Level 6, Daking House, Telephone no. (02) 219 5888. The Solicitor in Charge's telephone no. is (02) 219 5924. The PLS provides legal advice and assistance to prisoners as follows:

(a) Legal Advice and Minor Assistance

General legal advice and minor assistance is provided free of charge and not subject to a means test or merit test to prisoners at selected gaols.

(i) The general advice given covers many areas of law including crime, bail, family law, estate law and civil law, especially compensation for injuries resulting from accident or attacks in the gaol.

(ii) Minor assistance is regarded as follow up action to advice which is not complex and involves work of less than one hour. It includes, but it is not limited to, assistance for:

- classification, administrative and transfer problems;
- complaints to the Department of Corrective Services, police or Ombudsman's Office;
- issuing and serving subpoena where there has been no grant of legal aid (on a discretionary basis); and
- simple wills and simple estate matters.

Minor assistance does not include obtaining transcripts for prisoners except where the PLS acts for a prisoner in a particular matter pursuant to a grant of legal aid.

(iii) More complicated matters arising from all gaols are referred by telephone to Solicitor in Charge for advice.

(iv) Where assistance is required beyond minor assistance the Commission's policies and eligibility criteria for the relevant area of law apply. The PLS assists prisoners to complete legal aid applications and forwards the applications to the relevant section/office. Generally the PLS is unable to take detailed instructions from a prisoner except in exceptional circumstances. However, the PLS will pass on messages from Commission staff to prisoners. Contact the Solicitor in Charge on 219 5924 or the Senior Clerk on (02) 219 5888 regarding messages for prisoners.

(v) The gaols where advice and minor assistance is provided are:

- Bathurst and East Maitland. (Staff from the Orange and Newcastle Legal Aid Offices respectively, attend these gaols.)
- Cessnock, Cooma, Goulburn and Grafton. (Private solicitors on a rostered basis attend these gaols - the PLS attends to the payment of their costs.)

- Metropolitan gaols - Reception Prison, Industrial Centre, Prison Hospital, Remand Centre, Training Centre, Special Purpose Prison, Special Care Unit, Mulawa Detention Centre, Silverwater Prison Complex, Parramatta Gaol, Norma Parker Centre, Parklea Gaol, Windsor (John Morony) Correctional Centre and Emu Plains Correctional Centre (serviced by PLS staff).

Most gaols are attended on a weekly basis. Some of the smaller institutions are attended on a fortnightly basis. The actual days of attendance vary. The section should be contacted to ascertain actual attendance days.

Enquiries concerning the PLS's current attendance roster for advisings should be made to the Senior Clerk on (02) 219 5888.

(b) Visiting Justice Proceedings, Offender's Review Board Hearings, Serious Offenders' Review Board Applications

The PLS provides representation for prisoners:

- (i) at selected gaols for proceedings conducted by Visiting Justices. For information regarding location and frequency of Visiting Justices contact the PLS on (02) 219 5888;
- (ii) at review hearings conducted before the Offenders' Review Board (solicitors from PLS appear at the hearings); and
- (iii) for resentencing matters referred by the Serious Offenders' Review Board to the Supreme Court (solicitors from PLS act in these matters, private solicitors to be assigned matters only in case of conflict or exceptional circumstances).

Representation in these matters is subject to the means test applied in the Commission's duty solicitor scheme matters. The Commission has determined, pursuant to section 34(3)(b) of the Act, that for these matters there is no right of appeal to a Legal Aid Review Committee for a legal aid application refused wholly or partly on the grounds of means.

9. MENTAL HEALTH MATTERS

9.1 The Commission operates a Mental Health Advocacy Service at Level 4, 74-76 Burwood Road, Burwood NSW 2134, telephone no. (02) 745 4277.

9.2 The Commission's policy on representation in Mental Health matters is that matters should be conducted by salaried Commission solicitors unless a salaried solicitor is unable to conduct the matter or exceptional circumstances exist.

9.3 Legal aid is available in relation to Mental Health Act matters as follows:

(a) not subject to the means and not subject to the merit test to:

- (i) patients or persons appearing in Magistrate inquiries under the Mental Health Act 1990;
- (ii) forensic patients appearing before the Mental Health Review Tribunal under the Mental Health Act 1990;
- (iii) persons subject to the Mental Health (Criminal Procedure) Act 1990, except non-forensic patients appearing before the Mental Health Review Tribunal in proceedings under the Mental Health (Criminal Procedure) Act 1990 who have not been granted legal aid for their trial or special hearing, or who do not meet means test C guidelines;
- (iv) patients appearing before the Psychosurgery Review Board in relation to proceedings under the Mental Health Act 1990; or
- (v) patients appearing before the Mental Health Review Tribunal on a hearing to determine the question of the making of a continued detention order or a continued treatment patient order, or order pursuant to s19 of the Protected Estates Act 1983.

(b) subject to the merit test, but not subject to the means test to patients:

- (i) appealing to the Mental Health Review Tribunal against the decision of a Medical Superintendent not to discharge a temporary or continued treatment patient;
- (ii) appealing to the Supreme Court against decisions of the Mental Health Review Tribunal or continued detention in hospital.

(c) subject to means test A and the merit test to:

- (i) persons other than patients appealing against decisions of magistrates or the Mental Health Review Tribunal or continued detention in hospital.

9.4 Legal aid is available to affected persons (other than witnesses) for Disability Services and Guardianship Act 1987 matters.

- (a) before the Guardianship Board, where the Board has granted leave for the person to be represented. Means Test A and the merit test apply to applicants, except to 'disabled' persons (as defined by the Act). Neither the means test nor the merit test applies to 'disabled' persons in matters before the Guardianship Board.

- (b) on appeal to the Supreme Court from decisions of the Guardianship Board. Means Test A and the merit test apply to all applicants except to 'disabled' persons (as defined by the Act). The merit test only applies to disabled persons for appeals to the Supreme Court from decisions of the Guardianship Board.

9.5 The Mental Health Advocacy Service administers and co-ordinates legal aid grants and representation for proceedings before the Guardianship Board under the Disability Service & Guardianship Act 1987, and for appeals to the Supreme Court from decisions of the Board. Representation in these matters is provided by Commission solicitors and private practitioners. Wherever possible Commission staff appear for disabled persons. Other affected persons are represented by private solicitors on a referral basis, except where no conflict exists (between the disabled person and the other affected person) and the Service can therefore appear for both persons.

The Mental Health Advocacy Service has social workers who can advise solicitors on a person's ability to manage himself/herself or handle his or her day to day affairs and on possible alternatives to hospitalisation. The Senior Social Worker may be contracted on (02) 745 4277. The Commission's Education and Information Section provides educational material for staff, interested community groups, health workers, families and friends of clients. The Education and Information Section can be contacted on (02) 560 4933.

10. CHILD SUPPORT MATTERS

10.1 The Child Support Service assists sole parent pensioners residing in the Sydney metropolitan area who are the subject of the review of Stage 1 pensioners by the Department of Social Security (DSS). A parent comes within the terms of the DSS Stage 1 Review if:

- (a) the parent was granted a Sole Parent's Pension (SPP) between 1 June 1988 and 30 September 1989;
- (b) the parent is currently receiving SPP;
- (c) the parent has not yet satisfied DSS that the parent has taken reasonable action for maintenance and/or should be granted an exemption from taking maintenance action; and
- (d) the parent has received a letter from DSS requiring reasonable action to be taken or an exemption to be granted within 3 months and directing the parent to approach a legal aid agency if assistance is required to take action for maintenance.

10.2 The Child Support Service is located at:

Level 4,
74-76 Burwood Road
Burwood NSW 2134
Telephone: (02) 744 3833
(008) 45 1784
for callers outside Sydney area

10.3 The Service provides the following services to persons meeting the requirements set out in 10.1 and to others:

- (a) general legal advice, not subject to a means or merit test, on the viability of child maintenance proceedings and on the conduct of child maintenance proceedings;
- (b) minor assistance, in particular letters to non-custodial parents attempting to settle the question of child maintenance by negotiation and letters to DSS advising DSS that maintenance action is not viable;
- (c) legal representation in child maintenance proceedings under the Family Law Act and in proceedings under the Child Support (Assessment) Act, subject to a means and merit test;
- (d) assistance in negotiating and registering formal agreements for child maintenance under the Family Law Act and under the Child Support (Assessment) Act, subject to means test and a merit test;
- (e) telephone information (by way of a 008 number) for sole parents outside the Sydney metropolitan area on maintenance proceedings and on obtaining legal aid for maintenance proceedings.

- 10.4** Solicitors from the Child Support Service provide advice and assistance at the Burwood office and also at other metropolitan offices of the Legal Aid Commission in child maintenance proceedings. Solicitors from the Service also provide representation at several metropolitan courts.

LOCATION OF LEGAL AID COMMISSION OFFICES

HEAD OFFICE

Daking House
11-23 Rawson Place,
SYDNEY NSW 2000
DX 5 SYDNEY
Telephone: (02) 219 5711
Fax: (02) 219 5935

BANKSTOWN

Civic Tower
Suite 9, Level 4
Cnr Rickard Rd & Jacobs
Street
BANKSTOWN 2200
Telephone: (02) 707 4555
Fax: (02) 708 6505

BLACKTOWN

Level 3
85 Flushcombe Road
BLACKTOWN 2148
DX 8111 BLACKTOWN
Telephone: (02) 621 4800
Fax: (02) 831 5597

BONDI JUNCTION

1 Newland Street
BONDI JUNCTION 2022
DX 12018 BONDI
Telephone: (02) 387 3800
Fax: (02) 389 6553

BURWOOD

Level 4
74-76 Burwood Road
BURWOOD 2134
DX 8541 BURWOOD
Telephone: (02) 747 6155
Fax: (02) 744 6936

CAMPBELLTOWN

Level 3
121 Queen Street
CAMPBELLTOWN 2560
DX 5119
CAMPBELLTOWN
Telephone: (046) 28 2922
Fax: (046) 28 1192

FAIRFIELD

Suite 5, Level 2
25 Smart Street
FAIRFIELD 2165
DX 5068 FAIRFIELD
Telephone: (02) 727 3777
Fax: (02) 724 7605

GOSFORD

207 Albany Street
NORTH GOSFORD 2250
DX 7222 GOSFORD
Telephone: (043) 24 5611
Fax: (043) 24 3503

HURSTVILLE

Ground Floor
12-14 Ormonde Pde
HURSTVILLE 2220
DX 11328 HURSTVILLE
Telephone: (02) 570 4055
Fax: (02) 580 9676

LISMORE

Suite 6, Level 4
29 Molesworth Street
LISMORE 2480
DX 7740 LISMORE
Telephone: (066) 21 2082
Fax: (066) 21 9874

LIVERPOOL

Suite 3, Level 3
Interdell Centre
Cnr George & Scott Sts
LIVERPOOL 2170
DX 5045 LIVERPOOL
Telephone: (02) 601 1200
Fax: (02) 601 2249
(Liverpool office is a referral
centre)

MANLY

Suite 6, Level 4
39 East Esplanade
MANLY 2095
DX 9207 MANLY
Telephone: (02) 977 1479
Fax: (02) 977 3357

NEWCASTLE

Level 1
51-57 Bolton Street
NEWCASTLE 2300
DX 7911 NEWCASTLE
Telephone: (049) 29 5482
Fax: (049) 29 3347

ORANGE

241 Lords Place
ORANGE 2800
DX 3040 ORANGE
Telephone: (063) 62 8022
Fax: (063) 61 3983

PARRAMATTA

91 Phillip Street
PARRAMATTA 2150
DX 8293 PARRAMATTA
Telephone: (02) 891 1600
Fax: (02) 689 1082
(Parramatta office is a referral
centre)

PENRITH

76 Henry Street
PENRITH 2750
DX 8038 PENRITH
Telephone: (047) 32 3077
Fax: (047) 21 0572

RYDE

787 Victoria Road
RYDE 2112
DX 8405 RYDE
Telephone: (02) 807 3044
Fax: (02) 809 6739

TAMWORTH

3 Fitzroy Street
TAMWORTH 2340
DX 6110 TAMWORTH
Telephone: (067) 66 6322
Fax: (067) 66 8303

WAGGA WAGGA

2nd Floor
Dept of Housing Building
Cnr Baylis & Morgan Sts
WAGGA WAGGA 2650
DX 5424 WAGGA
Telephone: (069) 21 6588
Fax: (069) 21 7106

WOLLONGONG

1st Floor
73 Church Street
WOLLONGONG 2500
DX 5167 WOLLONGONG
Telephone: (042) 28 8299
Fax: (042) 29 4027
(Wollongong office deals with in-
house matters, referral matters and
client interviews).

SPECIALIST SERVICES

CHILDREN'S LEGAL SERVICE

Shop 2, 287 Beames Avenue

MT DRUITT 2770

PO Box V139

MT DRUITT VILLAGE 2770

Telephone: (02) 625 5155

Fax: (02) 675 3738

MENTAL HEALTH ADVOCACY SERVICE

Level 4, 74-76 Burwood Road

BURWOOD 2134

DX 8541 BURWOOD

Telephone: (02) 745 4277

Fax: (02) 744 6936

PRISONERS' LEGAL SERVICE

(based at Head Office)

Telephone: (02) 219 5888

Fax: (02) 219 5916

CHILD SUPPORT SERVICE

Level 4, 74-76 Burwood Road

BURWOOD 2134

DX 8541 BURWOOD

Telephone: (02) 744 3833
(008) 45 1784

Fax: (02) 744 6936

VETERANS' ADVOCACY SERVICE

Level 5

1 Francis Street

DARLINGHURST 2010

Telephone: (02) 339 7677

Fax: (02) 360 4204

Legal Aid Commission of NSW

Means Test Guidelines

***1 April 1994
Policy & Education Branch***

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***For more information about the Means Test, contact the
Policy and Education Branch, (02) 219 5921***

1. WHAT IS THE MEANS TEST?

1.1 The means test sets out principles and indicators for income-testing and asset-testing applications for legal assistance to do the following:

- To assess whether or not an application's income and assets are such that they are eligible to receive legal aid.
- If eligible,
 - (a) to assess whether or not the applicant can afford to pay an initial contribution towards the costs of the legal assistance sought (See Section 36(1)(a) of the Legal Aid Commission Act); and
 - (b) to assess whether or not a contribution should be levied on the applicant if an order for costs is made against him/her (see Section 36(1)(b) of the Legal Aid Commission Act).

1.2 The means test is not the sole determinant of an applicant's eligibility for legal aid. Eligibility is also determined by other factors for example, whether or not legal aid is available for the type of matter for which aid is sought, or whether or not the applicant's case has reasonable prospects of success.

2. WHAT IS THE MEANS TEST BASED ON?

The Commission's means test is based on the Henderson Poverty Line. The poverty line is regarded as an unofficial standard of poverty in Australia. It is calculated with reference to Household Disposable Income and Average Weekly Earnings and is updated regularly in line with movements in prosperity reflected in average income of the community.

3. WHAT MATTERS ARE MEANS TESTED?

3.1 The means test is not applied to the following:

- the Commission's legal advice services
- family law duty solicitor matters where the applicant is in custody
- children in Children's Court and Community Welfare Appeal Tribunal matters
- children where an order for separate representation is made under section 65 of the Family Law Act
- first appearance bail applications in local court criminal duty matters
- certain Mental Health Advocacy Service matters
- Veterans' Affairs matters (except for war service pension claims)
- disabled persons as defined by the Disability Services and Guardianship Act 1987 before the Guardianship Board and Supreme Court appeals.

3.2 All other matters are means tested.

4. WHOSE INCOME AND ASSETS ARE CONSIDERED WHEN APPLYING THE MEANS TEST?

The Commission's means test guidelines have regard to the ability of

- the applicant (see 4.1) and
- certain person(s) associated with the applicant (see 4.2)

to meet the ordinary professional cost of the legal services the subject of the application. Accordingly, the means test guidelines are applied to these persons.

Hereinafter, in this document, any reference to the means of the applicant includes, where appropriate, the means of the associated persons as defined below.

This includes 6.1 - 6.4; 7.2; 8.2; and 9.7.

4.1 Applicant

The means test guidelines are applied to the income and assets of the applicant. For the purpose of the means test, the applicant is regarded as the person whose behalf legal aid is sought; and

4.2 Associated Persons

(i) Applicant's spouse or de facto partner

The means test guidelines are applied to the income and assets of the applicant's spouse or de facto partner; and

(ii) Other persons financially responsible for the applicant

With one exception, detailed below, the means test guidelines are applied to the income and assets of any person who is financially responsible for, or who provides financial support to, the applicant.

Where legal aid is sought by a child (under 18 years) for any criminal proceedings to be heard outside the Children's Court (Children's Court matters not being subject to a means test) including appeals to the District Court from a decision of a Children's Court magistrate, the means test guidelines are applied to the income and assets of the child and his/her spouse, and not to the income and assets of other persons financially responsible for the child.

Where the applicant is a corporation, a member of an unincorporated association, or is applying for legal aid in respect of proceedings under the Family Provision Act 1982, special guidelines apply.

(iii) Corporations

Where the applicant is a corporation, the means test guidelines are applied to the income and assets of the corporation and also the income and assets of any person(s) whose interest it is considered will be directly and beneficially affected if legal aid is granted to the applicant.

(iv) *Memberships of unincorporated associations*

Where the applicant is a member of an unincorporated association, the means test guidelines are applied to the income and assets of the association and to the income and assets of any member of the association whose interests it is considered will be directly and beneficially affected if legal aid is granted to the applicant.

(v) *Applicants in the Family Provision Act proceedings*

Where the applicant is applying for legal aid in respect of proceedings under the Family Provision Act 1982, the means test guidelines are applied to the income and assets of the applicant and the applicant's spouse or de facto partner, and to the income and assets of any other person(s) whose interest it is considered will be beneficially affected if legal aid is granted to the applicant.

4.3 Discretion to Disregard Means of Associated Persons

There is a discretion to disregard the income and assets of associated persons in certain circumstances, for example, where it is considered that the income and/or assets are not available for the use or benefit of the applicant or that the applicant does not have access to the income or those assets, or where the associated person has a contrary interest in the matter for which legal aid is sought, or in the case of a spouse, where the applicant and spouse are separated.

In Means Test 'A' matters the discretion to disregard the income and assets of associated persons lies with legal officers Grade III-IV and above.

In means Test 'B' and 'C' matters, the discretion to disregard the income and assets of associated persons lies with the officer determining the application for aid, or by private practitioners authorised to grant aid under the Legal Aid Commission Act 1979.

5. APPLICATIONS OF THE MEANS TEST GUIDELINES

5.1 Contributions

The means test guidelines are to be used to assess contributions under sections 36(1)(a) and 36(1)(b) of the Legal Aid Commission Act.

5.2 Variation in means test guidelines

The income and assets guidelines and contributions scales vary according to the type of matter for which legal aid is sought.

Separate guidelines are applied to each of the following groups of matters-

5.3 Means Test A Guidelines

- All Civil Law matters
- All Administrative Law matters
- Family Law matters:
 - *including* 'care' and Community Welfare Appeals Tribunal matters; and
 - *excluding* duty scheme for parents in child welfare proceedings.
- Criminal Indictable matters and all Criminal Appeals.

5.4 Means Test B Guidelines

- Defended Local Court Criminal Duty Solicitor matters
- Duty scheme for parents in child welfare proceedings.

5.5 Means Test C Guidelines

- Pleas, Mentions and Bail Applications in Local Court Criminal matters
- Informants in Local Court Criminal matters
- Supreme Court Bail Applications
- Representation provided by the Prisoners' Legal Service.

6. MEANS TEST A GUIDELINES

- ALL CIVIL LAW MATTERS
- ALL ADMINISTRATIVE LAW MATTERS
- FAMILY LAW MATTERS
 - including 'care' and Community Welfare Appeals matters; and
 - excluding duty scheme for parents in child welfare proceedings.
- CRIMINAL INDICTABLE MATTERS AND ALL CRIMINAL APPEALS

6.1 Eligibility

The applicant's eligibility for legal aid in these matters is determined by:

- applicant's *weekly disposable income*
- applicant's *net liquid assets*
- assessment of applicant's *ability to pay legal costs*.

(i) Weekly disposable income - what is included?

Income from all sources is included in the assessment, including, but not limited to, the following:

- pensions/benefits
- wages/salaries
- business income
- maintenance payments
- board or rent received
- interest earned and dividends paid on investments
- workers' compensation benefits

The only exemptions from income are family and handicapped child's allowances, the Additional Family Payment, the Guardian Allowance and Rent Assistance.

(ii) How to calculate weekly disposable income.

The means test guidelines on income are applied to the applicant's *weekly disposable income* which is the applicant's total weekly income, less:

- income tax
- housing costs (i.e. rent, half-board, or mortgage instalments plus municipal and water rates, to a ceiling of \$128 per week)
- dependant allowance
 - (i) A dependant's allowance is to be deducted for a spouse, whether or not he/she receives a separate income, and for all genuine dependants, whether or not they reside with the applicant.
 - (ii) The amount to be deducted is \$60 per dependant except where dependants do not reside with the applicant, in which case the actual amount of maintenance paid up to a ceiling of \$60 per dependant is to be deducted.

Means Test A

(iii) Income Guidelines

- To qualify for legal aid, applicants must have \$190 or less in weekly disposable income.
- Applicants with a weekly disposable income of \$128 or less qualify for legal aid with no contribution levied on income.
- Applicants with a weekly disposable income of between \$129 and \$190 qualify for legal aid, but pay a contribution based on their income as per the table below.

GUIDELINES FOR CONTRIBUTION ON WEEKLY DISPOSABLE INCOME

Weekly Disposable Income	Applicants with \$500 or less in Net Liquid Assets	Applicants with \$501 - \$1000 in Net Liquid Assets	Applicants with more than \$1000 in Net Liquid Assets
\$128 or less	nil	nil	nil
\$129 - \$140	\$60	\$75	\$100
\$141 - \$153	\$120	\$150	\$200
\$154 - \$165	\$180	\$225	\$300
\$166 - \$178	\$240	\$300	\$400
\$179 - \$190	\$300	\$375	\$500

(iv) Net liquid assets - what is included?

Liquid assets are readily realisable assets.

Unless the value is unusually high, liquid assets do *not* include the following:

- clothes
- tools of trade
- household furniture
- motor vehicle which is reasonably necessary for domestic or employment purposes.

(v) How to calculate net liquid assets

The means test guidelines on assets are applied to the applicant's *net liquid assets*, which are the applicant's total liquid assets less:

- a dependant allowance of \$500 per dependant (a dependant's allowance is to be deducted for a spouse whether or not he/she receives a separate income).

(vi) Assets Guidelines

- Subject to the applicants eligibility under the income guidelines, applicants with net liquid assets of \$500 or less are not required to pay a contribution on assets.
- Subject to the applicant's eligibility under the income guidelines, applicants with over \$500 in net liquid assets pay a contribution based on their assets as per the table below:

GUIDELINES FOR CONTRIBUTIONS ON NET LIQUID ASSETS

Net liquid assets	Contribution
\$500 or less	nil
\$501 - \$1000	\$100
\$1001 - \$3000	\$100 plus 80% of assets with this range
\$3001	\$1700 plus 100% of assets over \$3000

(vii) Total contribution

- The total contribution to be levied under the means test guidelines is the sum of the contributions levied on income and on assets.
- *If the total contributions exceeds the estimated cost of the proceedings, the applicant is ineligible for aid.*

(viii) Applicant's ability to pay legal costs

In addition to assessing the applicant's eligibility under the income test and asset test guidelines, the following matters are taken into consideration when determining an applicant's eligibility for legal aid:

- the applicant's ability to afford the cost of legal proceedings having regard to his/her general assets;
- the applicant's ability to realise or secure a loan to cover the cost of legal proceedings having regard to his/her substantial fixed assets, (including equity in principal home) and/or interest in business assets.

Where, having regard to the above, the applicant is considered to have the ability to pay his/her own legal costs, legal aid will be refused.

Where, the applicant's lifestyle or standard of living appears to be supported by means beyond those disclosed in the legal aid application, legal aid may be refused.

6.2 Discretion

Discretion can be exercised to grant legal aid to applicants who exceed means test guidelines and to waive or vary the level of contribution from the amounts contained in the guidelines.

6.3 Granting legal aid to applicants who exceed means test guidelines

There is discretion to grant legal aid to an applicant whose income and/or assets exceed the means test guidelines. Discretion can be exercised in these circumstances to ensure that the following factors, amongst others, are taken into account:

- the likely cost of proceedings
- the type of proceedings
- the overall financial position of the applicant
- situations where the applicant would suffer special hardship if legal aid was refused.

6.4 Waiving or varying contributions

There is a discretion to waive the contribution or vary the level of contribution (i.e. to increase or decrease the level of contribution) on income and/or assets from the amount contained in the guidelines.

The discretion to *increase* the level of contribution should take account of, amongst other things:

- the likely cost of proceedings
- the type of proceedings
- the overall financial position of the person making the application for legal aid.

Discretion to *wave* or *decrease* the level of contribution should only be exercised in limited circumstances, such as where the applicant would suffer special hardship if the contribution was imposed.

7. MEANS TEST B GUIDELINES

- DEFENDED LOCAL COURT CRIMINAL DUTY SOLICITOR MATTERS
- DUTY SCHEME FOR PARENTS IN CHILD WELFARE PROCEEDINGS
- COMMITTALS

7.1 Eligibility

To qualify for legal aid, applicants must satisfy both the *weekly disposable income guidelines* and the *net liquid assets guidelines*.

(i) Weekly disposable income - what is included?

Income from all sources is included in the assessment, including, but not limited to, the following:

- pension/benefits
- wages/salaries
- business income
- maintenance payments
- board or rent received
- interest earned and dividends paid on investments

The only exemptions from income are family and handicapped child's allowance, the Additional Family Payment, the Guardian Allowance and Rent Assistance.

(ii) How to calculate weekly disposable income

The means test guidelines on income are applied to the applicant's *weekly disposable income* which is the applicant's total weekly income, less:

- income tax
- housing costs (i.e. rent, half-board, or mortgage instalments plus municipal and water rates, to a ceiling of \$128 per week)
- dependant allowance
 - (i) A dependant's allowance is to be deducted for a spouse, whether or not he/she receives a separate income, and for all genuine dependants, whether or not they reside with the applicant.
 - (ii) The amount to be deducted is \$60 per dependant except where dependants do not reside with the applicant, in which case the actual amount of maintenance paid up to a ceiling of \$60 per dependant is to be deducted.

(iii) Income Guidelines

- To qualify for legal aid the applicant must have \$190 or less in weekly disposable income.
- Applicants with a weekly disposable income of \$128 or less qualify (subject to eligibility under the assets guidelines) for legal aid with no contribution levied on their income.

Means Test B

- Applicants with a weekly disposable income of \$129 - \$190 qualify (subject to eligibility under the assets guidelines) for legal aid with a contribution on income.
- Applicants with a weekly disposable income greater than \$190 are ineligible for legal aid.

(iv) Net liquid assets - what is included?

Liquid assets are readily realisable assets. Unless the value is unusually high, liquid assets do *not* include:

- clothes
- tools of trade
- household furniture
- equity in applicant's principal home
- motor vehicle which is reasonably necessary for domestic or employment purposes.

(v) How to calculate net liquid assets

The means test guidelines are applied to the applicant's net liquid assets, which are the applicant's total liquid assets, less:

- a dependant allowance of \$500 per dependant (a dependant's allowance is to be deducted for a spouse whether or not he/she receives a separate income).

(vi) Assets Guidelines

- Applicants with net liquid assets of \$1,000 or less are (subject to eligibility under the income guidelines) eligible for legal aid with no contribution on assets.
- If the applicant's net liquid assets exceed \$1,000, a further deduction - the estimated cost of the proceedings - is to be made to assess their eligibility.
 - (a) If, after the deduction of the estimated cost of the proceedings, the applicant's assets are \$1,000 or less, the applicant is (subject to eligibility for aid under the income guidelines) eligible for aid with a contribution on assets.
 - (b) If, after the deduction of the estimated cost of the proceedings, the applicant's assets exceed \$1,000, the applicant is ineligible for aid.

(vii) Total contribution

If the applicant's weekly disposable income is between \$129 and \$190 *and/or* the applicant's assets, after deduction of the dependant's allowance and the estimated cost of the proceedings, is \$1,000 or less, a total contribution of \$50 is levied.

7.2 Discretion to refuse legal aid to applicants whose income and/or assets fall below means test guidelines

Discretion can be exercised to refuse legal aid to applicants whose income *and/or* assets fall below the levels provided in the means test guidelines. This discretion can be exercised in the following situations, amongst others:

- where the applicant should reasonably be able to afford the cost of legal proceedings having regard to his/her general assets;
- where the applicant has substantial fixed assets or an interest in business assets that could be realisable, or against which the applicant could secure a loan to cover the cost of legal proceedings;
- where the applicant's lifestyle or standard of living appears to be supported by means beyond those disclosed in the legal aid application.

8. MEANS TEST C GUIDELINES

- PLEAS, MENTIONS AND BAIL APPLICATIONS IN LOCAL COURT CRIMINAL MATTERS
- INFORMANTS IN LOCAL COURT CRIMINAL MATTERS
- SUPREME COURT BAIL APPLICATIONS
- REPRESENTATION PROVIDED BY THE PRISONERS' LEGAL SERVICE

8.1 Eligibility

To qualify for legal aid, applicants must satisfy both the *weekly disposable income guidelines* and the *net liquid assets guidelines*.

(i) Weekly disposable income - what is included?

Income from all sources is included in the assessment, including, but not limited to, the following:

- pensions/benefits
- wages/salaries
- maintenance payments
- board or rent received
- interest earned and dividends paid on investments
- workers' compensation benefits.

The only exemptions from income are family and handicapped child's allowances, the Additional Family Payment, the Guardian Allowance and Rent Assistance.

(ii) How to calculate weekly disposable income

The means test guidelines on income are applied to the applicant's *weekly disposable income* which is the applicant's total income, less:

- income tax
- housing costs (i.e. rent, half-board, or mortgage instalments plus municipal and water rates, to a ceiling of \$128 per week).
- dependant allowance
 - (i) A dependant's allowance is to be deducted for a spouse, whether or not he/she receives a separate income, and for all genuine dependants, whether or not they reside with the applicant.
 - (ii) The amount to be deducted is \$60 per dependant except where dependants do not reside with the applicant, in which case the actual amount of maintenance paid up to a ceiling of \$60 per dependant is to be deducted.

(iii) Income Guidelines

- Applicants with \$190 or less in weekly disposable income are, subject to eligibility under the assets guidelines, eligible for legal aid.

- No contribution on income is levied in these matters.
- Applicants with a weekly disposable income greater than \$190 are ineligible for legal aid.

(iv) Net liquid assets - what is included?

Liquid assets are readily realisable assets. Unless the value is unusually high, liquid assets do not include:

- clothes
- tools of trade
- household furniture
- equity in applicant's principal home
- motor vehicle which is reasonably for domestic or employment purposes.

(v) How to calculate net liquid assets

The means test guidelines are applied to the applicant's net liquid assets, which are the applicant's total liquid assets, less:

- a dependant allowance of \$500 per dependant (a dependant's allowance is to be deducted for a spouse whether or not he/she receives a separate income).

(vi) Assets Guidelines

- Applicants with \$1,000 or less in net liquid assets are, subject to eligibility under the income guidelines, eligible for legal aid.
- No contribution on assets is levied in these matters.
- Applicants with more than \$1,000 in net liquid assets are ineligible for aid.

8.2 Discretion to refuse legal aid to applicants whose income and/or assets fall below means test guidelines

Discretion can be exercised to refuse legal aid to applicants whose income and/or assets fall below the levels provided in the means test guidelines. This discretion can be exercised in the following situations, amongst others:

- where the applicant should reasonably be able to afford the cost of legal proceedings having regard to his/her general assets;
- where the applicant has substantial fixed assets or an interest in business assets that could be realised, or against which the applicant could secure a loan to cover the cost of legal proceedings;
- where the applicant's lifestyle or standard of living appears to be supported by means beyond those disclosed in the legal aid application.

9. VERIFICATION OF MEANS

The Commission requires that applicants for legal aid verify their means (both income and assets) as disclosed on the legal aid application. The means of associated persons must also be verified, except where discretion has been exercised to disregard their means.

9.1 Verification of Income

The solicitor responsible for determining the application for legal aid should sight the following documents (or copies to verify the applicant's income as disclosed on the application form:

- for *salaried* applicants - a recent payslip (in the event of the applicant not having a payslip, then some other evidence of income or employment must be provided, such as a letter from an employer or the most recent group certificate;
- for *pensioners* - a pension or other benefit card;
- for *self-employed* applicants - a copy of the most recent full tax return.

9.2 Verification of liquid assets

The solicitor responsible for determining the application for legal aid should sight recent statements showing two months' operation on all accounts maintained by the applicant with financial institutions, as disclosed on the application form.

9.3 Verification of non-liquid assets

Verification of non-liquid assets should be requested when the officer determining the application considers it appropriate, e.g. where there appears to be some inconsistency in the application.

9.4 Non verification of means

With certain exceptions (see 9.5 - 9.6) and a discretion (see 9.7), a grant of aid will *not* be made until the income and liquid assets of the applicant have been verified by the solicitor determining the grant of aid.

If the required documents are not produced within a reasonable period of time of being requested, then legal aid will be *refused*.

9.5 Emergency grants

Verification of applicant's means is not required prior to an emergency grant of aid being granted. However, a formal application must be lodged with the Commission within 14 days of the emergency grant being made, and documents verifying the applicant's income and liquid assets must also be lodged within this time frame.

9.6 First contact duty solicitor matters

Verification of the applicant's means is not required on the occasion of a client's first contact (whether an office interview or a court appearance) with a duty solicitor in relation of a particular matter. (It should be noted that first appearance bail applications are not means tested and therefore the question of verification will not apply).

- If, however, an additional contact with or appearance for the client is necessary, then the client is required to produce documents verifying his/her income and liquid assets.
- Where the additional contact or appearance is being made with a different duty solicitor, the solicitor who first deals with the client should advise him/her that they will be required to provide verifying means to that second solicitor.

9.7 Discretion

There is a discretion in special circumstances to waive the requirement for verification of means. This discretion can be exercised by legal officers Grade III-IV and above. In duty solicitor matters, the discretion can be exercised by legal officers Grade I-III and above and by private practitioners authorised to grant aid under the Legal Aid Commission Act 1979.

There is a discretion to waive the requirement for verification of means in duty solicitor matters for parents in proceedings under the Children (Care and Protection) Act, where in all the circumstances, it is impractical to obtain verification. This discretion can be exercised by Commission officers and private practitioners authorised to grant legal aid under the Legal Aid Commission Act 1979 (effective 27.9.90).

9.8 Refusal to grant legal aid

Verification of applicant's income and liquid assets is not required if it is apparent from the material contained in the application that the application will be refused (whether on merit, means or guidelines).

If this refusal subsequently becomes the subject of an appeal to the Legal Aid Review Committee, then verification may be required.

Legal aid in \$50m crisis, says report

By **SONYA VOUMARD**

A \$50 million funding increase for legal aid was needed urgently to help at least 50,000 disadvantaged Australians who were being denied justice, the Law Council of Australia said yesterday.

"There is a crisis in legal aid because large numbers of people can't get it," the council's deputy secretary-general, Mr Barrie Virtue, said.

The demand for legal aid had risen significantly, partly because of the recession, but funding had not increased in real terms, the council said in a submission to the Federal and State governments.

"To restore funding to levels which would provide legal aid now to those who were eligible for legal aid in 1987-88 requires a real increase in funding of \$50 million," the submission said.

"It is quite unacceptable that those in the Australian community least able to afford access to justice should be deprived of legal aid and be alienated from their right to it by the failure of Government to provide adequate funds."

The president of the council, Mr John Mansfield, QC, said: "Legal aid is being severely rationed and this makes a mockery of calls for better access to justice. It is the people who most need help who are denied access to justice by the shortage of legal aid."

Because priority was given to criminal defendants, most of whom were men, there was less legal aid available for

women and their specific needs, the council said.

Legal aid funding in 1992-93 totalled \$251.8 million. The Federal Government contributes 55 per cent of funding, with State governments providing the rest.

A spokeswoman for the Federal Minister for Justice, Mr Kerr, said yesterday the Government had maintained legal aid funding at a difficult budgetary time while many programs were being cut. Community legal centres received further funding, the spokeswoman said.

The council's submission said many social security recipients had been excluded from legal aid assistance because the assets test for legal aid was far more stringent than the test for social security benefits.

Heavy demand had forced Legal Aid Commissions to restrict grants by tightening means, matter and merit guidelines.

"If better access to justice is genuinely considered important, increased legal aid should be recognised as one of the most important ways of achieving it," Mr Mansfield said.

He said the funding arrangements had not taken into account the growth in population, growth in legislation, the recession, the growth in crime, increased government court charges, higher interpreters' fees, higher expert witness fees and costs associated with case management and new technology.

Legal aid centres demand pay-up^{SMH}

By JACQUELYN HOLE^{p5}
and ELIZABETH JURMAN

The State's community legal centres have called on the Government to pay more than \$6 million it owes the Legal Aid Commission after the commission's decision to stop funding civil legal cases.

At an emergency meeting yesterday, the Community Legal Centres — an umbrella organisation representing 28 legal centres — also called on the commission to defer the implementation of its decision, which is due to come into effect on January 1.

A spokeswoman for the legal centres, Ms Sandra Koller, a solicitor with the Marrickville Legal Centre, said a report by the former Auditor-General, Mr Ken Robson, had revealed that the State Government owed the commission \$3.2 million.

"We understand the Treasury has reneged on its [obligation] to pay this money," she said.

Funding for the commission is provided under a joint Federal/State agreement. The *Herald* understands that the Commonwealth Government is up to date on its funding obligations.

The Government also backed away from its commitment, in June, to contribute \$3.6 million a year for the next two years, as a one-off payment to help the commission overcome its funding crisis, Ms Koller said.

The decision to stop legal aid funding of most civil cases covers environmental, tenant, product liability, personal injury, victim compensation and professional negligence matters.

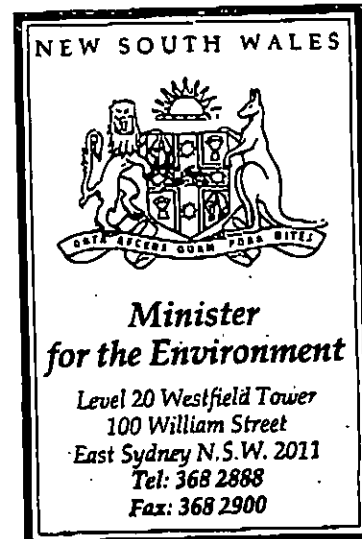
The State Opposition's spokesman on legal affairs, Mr Paul Whelan, called on the State Government last night to make up the Legal Aid Commission's funding shortfall to enable it to continue to act in civil matters.

"The Government has a clear obligation to fund them because the debts were incurred by an agency of the Government — the Legal Aid Commission," he said.

Deadline: TBA

In reply please quote: 49826/pcr

Dr J Messer
Chairperson
Nature Conservation Council of NSW
39 George Street
SYDNEY NSW 2000



- 7 AUG 1991

Dear Dr Messer,

I refer to your letter of 30 July 1991 (dated 30.1.91) regarding the Ministerial Committee on legal aid guidelines.

The Ministerial Committee has been formed to review the legal aid guidelines. If the Nature Conservation Council would like to make a submission to the Committee on the use of legal aid, then I would be happy to refer that submission to the Committee.

The Committee has not met to date but I would be happy to put to the Committee your request that they meet with the NCC.

Yours sincerely,

TIM MOORE, MP
Minister for the Environment



Nicola : A few small changes suggested only.
 Comment on loss of independence needs emphasis, early on!

my Note for

Briefing Mr Paul Whelan, MP
 Shadow Attorney General
 Re: Legal Aid and Environmental Issues

big font!

Thank
 F

The Legal Aid Commission of NSW has granted legal aid in public interest environmental matters since about 1985. It is still the only Legal Aid Commission in Australia to have a policy of making regular grants in such cases.

The number of applications and grants of legal aid has been extremely small given the large number of matters which the Legal Aid Commission handles. It has become difficult to obtain information directly from the Legal Aid Commission about the number of applications and grants made under this scheme. As far as we are aware the following applies:

Date	Applications Received	Applications Granted
85/86	5	5
86/87	55	17
87/88	23	13
88/89	52	27

We have not been able to obtain more recent information but suspect the number of applications and grants made have probably been reduced. Due to changes detailed below it has become very difficult to obtain legal aid in the last 12 months in New South Wales.

Review of the Environmental Policies

We believe that due to political pressure placed on the Legal Aid Commission because of legal aid grants to controversial court challenges in the areas of forestry and mining that the Commission decided to review its policies in 1991. For example, we are aware that in a couple of controversial matters a senior member of the Commission has been required to attend Cabinet meetings presumably to discuss grants of aid.

A review of the legal aid environmental policies was started in about March 1991. A discussion paper was produced by the Legal Aid Commission and responses sought and received from a number of individuals and organisations. The summary of those responses was basically favourable on the operation of the existing policies. Nevertheless the guidelines applying to environmental matters were substantially revised and new guidelines were implemented from July 1991.

Our major concerns with the current guidelines are that:

apl odo/whelan.hrf

1.

new heading.

Political pressure brought to bear a Independent LAC.
 H.H. Mr Justice Gane not re-appointed: Ministerial sub-Committee etc.

1. Legal aid in public interest environmental cases is restricted to only two classes of cases in the Land & Environment Court. This must be expanded to include other cases in the Land & Environment Court (eg. Class 5 pollution matters), the Supreme Court and Federal Court actions.
2. In deciding whether or not there is a substantial public interest at stake there is now a requirement that the "projected public economic benefit of the activity or the proposed undertaking" be taken into account. We regard this as totally inappropriate addition to the public interest criteria, *incapable of being applied without considerable investigation into*
3. Under the present policies and the practical application of these it is very difficult to obtain legal aid for precedent-setting test cases. Legal aid requires that there be reasonable prospects of success. It is impossible to provide this in test cases as these break new legal ground. If the public interest nature of proceedings is sufficient these cases must also be funded. *economic matters*
4. The way the means test is applied in environmental matters needs changing. These are public interest matters and it is inappropriate to apply the means test in the same way that it is applied in other civil areas where only individual interests are involved. Groups are already required to make substantial contributions (John Corkill being required to contribute \$12,000 for one case) we understand that the means of the group is relevant to the question of contribution. We do not think that the means of a particular applicant group should decide whether or not they obtain legal aid for a public interest matter.

Changes in Composition of Legal Aid Environmental Advisory Committee

In 1986, the Legal Aid Commission established an environmental consultative sub-committee to advise it on individual applications for aid under the public interest environmental guidelines.

During 1991, changes were made to the membership of the Legal Aid environmental consultative sub-committee. The committee had been an expert group of legal and other practitioners, often academics. From September 1991 the composition of the committee was changed to include a representative of the Chamber of Mines and a representative of the Forest Products Association. The executive director of the Forest Products was nominated to appear on the committee. These representatives have already had a conflict of interest over cases before the committee. In addition, a lawyer from the Department of Planning and the National Parks and Wildlife Service was included. These lawyers,

particularly in the case of the Department of Planning, will regularly have a conflict of interest. We think this is a gross abuse of the committee's process. The ACF and the Environmental Defender's Office have been able to nominate a representative on the committee for several years, but that person is always at arms length, being neither a Board member nor employee. We must stress that the aim of the committee is to be expert and not be "interest" based.

Recent Full Commission Decisions

Further worrying developments have emerged in the last 6 months. On at least two occasions the Legal Aid Commission staff have referred for decision two applicants under the public interest environmental law guidelines. The full Legal Aid Commission has therefore made a decision about whether or not legal should be granted. We are concerned at the possible influence of political considerations in this decision-making process. It also provides maximum opportunity for decision to be delayed (Corkill decision) case vs. FCN88V S.99 NSW Challenged.

The Australian Conservation Foundation and the NSW Amateur Fishing Clubs Association were refused legal aid by a meeting of the full Legal Aid Commission in June 1992. This is despite approximately 10 months work spent in preparing the legal aid application and providing three barristers' opinions, including those of two Queens Counsel, and \$5,000 worth of scientific reports to the Commission. The Commission spent approximately \$7,000 of its own money in preparation of the application. The Legal Aid Commission does not provide reasons when it refuses a grant of legal aid.

This case involves major public interest questions concerning the administration of pollution law under the Environmental Offences & Penalties Act and we consider this is a highly appropriate matter for the Legal Aid Commission to have funded. At this stage a more impecunious person has been found to act as applicant in the proceedings. If this person had not been forthcoming these proceedings would have had to stop in June.

As you would be aware, failing to obtain legal aid ^{has caused} already very difficult circumstances because not only will they be responsible for their own costs but, in the event that they lose, they will often have to pay the winner's costs. An affidavit setting out the history of the matter in relation to the ACF case is attached.

Scrutiny of Legal Aid by Government

In early August 1991 statements appeared in the media to the effect that the present Attorney General had written to the Legal Aid Commission suggesting that the Commission make cuts to legal aid in environmental matters. Suggestions were made that the

include comment on problem of advisory committee recommending aid → LA staff say "and recommended" then LA overturns! Should LA staff have delegated power to some other? ACF NSW AF CA
This happened to me
in C. is Hope
+ Webster +
Heritage
Council.
recommends?
Where adv. committee

Samy
~~Ministerial Sub-committee~~
Robert Webster
expenditure review committee had targeted this area as being one where savings of \$500,000 per annum could be made. In addition a Ministerial Advisory Committee was established consisting of Tim Moore, John Hannaford and ?? The committee's operations were virtually unknown. Correspondence was received early in 1992 stating that it was the view of the committee that the present arrangements in relation to legal should continue as they presently exist.

In light of the above history we feel that action is required in the following areas:-

1. Restoration of the Legal Aid Commission budget to an adequate level.
2. The independence of the Legal Aid Commission must be guaranteed. Appointments to the Commission must not be subject to any political motivation. *The Chairperson should again be appointed from the Bench!*
3. The current guidelines applied by the Legal Aid Commission should be returned to the situation which existed prior to the review in 1991.
4. The role of the environmental consultative sub-committee must be reviewed once again to ensure that it is an expert committee. It should not include any government lawyers and those bodies nominating representatives to it should nominate arms length experts only.
5. There is a lack of accountability by the Commission in providing reasons for its decisions to refuse legal aid. The commission does not provide information on the number of applications received under the environmental law guidelines, the number granted and the amount spent. Such information could easily be included in the Commission's annual report.
6. There needs to be a commitment to public interest environmental litigation which is precedent setting. NSW has the best environmental law system in Australia because of the strong legislation provided together with the ability given to citizens to enforce that legislation. This enforcement must include the ability to take test cases and the Commission fund this.

6 July 1992

Bushland in the City or the City in the Bush?

The protection of NSW's unique urban bushland continues to be of increasing importance to government agencies, concerned individuals and professional practitioners.

X The legal situation is constantly changing, ~~public expectations~~ ^{the public} are increasingly well-informed, and local government ~~grows~~ ever more committed to conserving and properly managing this scarce and threatened natural resource.

X However, many gaps still exist in our knowledge as to how ~~best~~ to manage urban bushland to ensure that it remains ecologically viable in the long-term ^① while also allowing it to function as an important social, cultural and recreational resource for existing ^{d future} communities ~~as well as future generations~~.

as research & service +
In fact, ~~the~~ more training, involvement and ~~research~~ occurs, the more ~~issues~~ ^{issues} are seen to be more complex and debatable ^{become}.

• Legal responsibilities and constraints? What is the current situation in regard to SEPP 19 - Bushland in Urban Areas and the Endangered Fauna Protection Act 1991? Will the new Local Government Act make a difference to what?

• To intervene or not to intervene? Bush regeneration techniques provide for relatively low cost strategies but there is no such thing as a free lunch.

X • Where to start with plans of management and how far to go at what cost?

• Community knowledge and expertise - how can it be best incorporated and utilized?

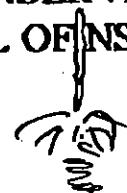
• The role of the private sector vs. a vs. the public sector and volunteers?

These are some of the issues that will be addressed in the course of this seminar. The seminar is structured to ensure that there is time for discussion and debate.

Part 11 of this series will be held in early 1993

It is expected that the proceedings will be published and we welcome an indication of your interest in purchasing a copy.

NATURE CONSERVATION COUNCIL OF NSW



BUSHLAND IN OUR CITIES AND SUBURBS

PART 1: MAKING PLANNING WORK



Saturday 29 August, 1992
Maiden Theatre, Botanic Gardens
Mrs Macquarie Rd., Sydney.

For further information, phone 247
2228 or 247 4206

2 APR 1992

The Law Society of New South Wales

A.C.N. 000 000 699

Our Ref: CJC:92/3/10/627
Direct Line 220 0308

31 March, 1992

Woolf & Associates
Solicitors
DX 1556
SYDNEY

170 Phillip Street,
Sydney NSW 2000
Telephone (02) 220 0333
Telex AA73063 LAWSOC
Fax 231 5809
DX 362 Sydney



Dear Sir,

I refer to correspondence of late 1991 in response to your letter of 6 December, 1991 in the matter of Mr John Corkill and the Legal Aid Commission.

Unfortunately I am unable to give you good news but can advise that I have raised the matter on a number of occasions with the Commission and the last of those being on 18 March, 1992.

Basically I have been informed that, once the application for legal aid was referred to it, the Commission made all further decisions and that it did so having available all materials submitted in support of the application.

Unfortunately, having regard to the response to date, I am not in a position to ascertain whether the Commission acted without any good and proper reason in refusing aid in the Heritage Council matter.

I would certainly agree with the comments in relation to the National Parks & Wildlife Act proceedings made in the second last paragraph of your letter of 6 December, 1991 in relation to the Commission in effect deferring the decision for an application for aid until the proceedings for which aid was sought had been determined.

While I can indicate that the matters have been raised with the Commission, it remains that the Commission itself made the decisions in relation to your client and the decisions were not made pursuant to any delegation or authorisation under Section 69. If the decision had been made pursuant to such delegation or authorisation then the Commission would be required pursuant to Section 34(5) to record the reasons for the determination of the application.

I can find no requirement in the current Act for the Commission to record reasons for its decision. However, I will continue to pursue that matter with the Commission and investigate the possibility of requesting an amendment to the legislation.

Yours faithfully,

C J CAWLEY
Responsible Legal Officer
Legal Aid Liaison Committee

VF:8327/WB

Solicitors
Helping you is their practice

AC.N. 002880864

Environmental Defender's Office Ltd

Suite 82, Lincoln House
280 Pitt Street
Sydney 2000 Australia
DX: 722 Sydney
Pag: EDO.

TEL: (02) 261 3599

FAX: (02) 267 7548

FACSIMILE TRANSMISSION SHEET

Date: 3/8/92

To: John Corkhill, NCC

Number:

From: Nicola Pain

Number of Pages Sent (incl. this page): 5

If there are any transmission difficulties please telephone (02)
261-3599

MESSAGE:

John,

Draft of briefing paper for
Whelan. I haven't received
correspondence re your letter
yet. This needs to be inserted.
Please for back charges today
if possible.

Thanks

Nicola

EDO

2 APR 1992

The Law Society of New South Wales

A.C.N. 000 000 587

Our Ref: CJC:92/3/1C/327
Direct Line 220 0308

1992

ociates

Dear Sir,

I refer to correspondence of late 1991 in relation to
6 December, 1991 in the matter of Mr John [redacted]
Commission.

Unfortunately I am unable to give you good news but I
raised the matter on a number of occasions with the [redacted]
last of those being on 18 March, 1992.

Basically I have been informed that, once the application
was referred to it, the Commission made all further
did so having available all materials submitted in support of the
application.

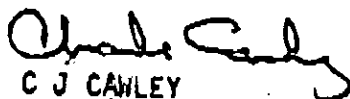
Unfortunately, having regard to the response to [redacted] to, I am in a
position to ascertain whether the Commission acted without any good and
proper reason in refusing aid in the Heritage Council matter.

I do certainly agree with the comments in relation to the [redacted]
Wildlife Act proceedings made in the second letter of 6 December, 1991 in relation to the Commission's effect
deferring the decision for an application for aid until the proceedings
for which aid was sought had been determined.

While I can indicate that the matters have been raised with the
Commission, it remains that the Commission itself made the decisions in
relation to your client and the decisions were not made pursuant to any
delegation or authorisation under Section 69. If the decision had been
made pursuant to such delegation or authorisation then the Commission
would be required pursuant to Section 34(5) to record the reasons for the
determination of the application.

I can find no requirement in the current Act for the Commission to record
reasons for its decision. However, I will continue to pursue that matter
with the Commission and investigate the possibility of requesting an
amendment to the legislation.

Yours faithfully,



C J CAWLEY
Responsible Legal Officer
Legal Aid Liaison Committee

VF:8327/WB

Solicitors
Helping you is their practice

Notes on meeting $\frac{1}{2}$ PAUL WHELAN Shadow AG
~~1/7~~ 1/7/92

Noan Monday 6 July 92

Paul Whelan

1. INTRODUCTION AND SUMMARY

This report examines the impact of the 1982 Rainforest Decision on the far north coast of NSW, with particular consideration of extravagant claims made in a booklet titled 'Promises and Realities' (Gibbs 1992), prepared for the Forest Products Association.

The region considered incorporates the Tweed, Richmond River and part of the Clarence River valleys. This area is covered by the Forestry Commission's Urbenville, Murwillumbah, Casino West, Grafton and Casino Management Areas. Only the first four of these were affected by the Rainforest Decision and are thus dealt with in detail in this report.

On the 26th October 1982 the NSW Government reacted to years of public pressure from the community by agreeing to transfer 87 739 hectares of public land to the control of the National Parks and Wildlife Service and creating 1 825 ha of new Flora Reserves (DEP 1983 pp 16-17). In the far north east of NSW this involved the creation of the Murray Scrub Flora Reserve, Cambridge Plateau Flora Reserve, Bundoozle Flora Reserve, Nightcap National Park, Washpool National Park and a major expansion of the Border Ranges National Park.

Nine years after that decision there has been a slight increase in timber industry employment within the region, in addition some 200 to 300 jobs within the region may have been created by tourism associated with the new reserves. It is surprising that with mill closures and amalgamations, reductions in quotas aimed at achieving sustainable yields, the economic downturn of the early 80's and 90's and the loss of resource within Washpool National Park that timber industry employment has remained so buoyant.

While no assessment of the output of mills within the region can be undertaken (due to the companies refusal to divulge such information to the public) it would be unusual, given the constant employment figures and presumably increased productivity, if output has not increased.

There have been reductions in the volumes of hardwood sawlogs being removed from two (Murwillumbah and Grafton) of the four Forestry Commission Management Areas affected by the decision, though these reductions were foreshadowed before the Rainforest Decision and are primarily the result of past overcutting. In the Grafton MA this reduction has apparently been compensated for by allocations from other Management Areas and a reported resurgence in private property logging.

There is a need for a detailed independent assessment to determine the overall resource changes within the region.

In the past 10 years the public have paid well over a million dollars for the industry to remove over a million cubic metres of hardwood sawlogs and a significant quantity of other timber from public forests in the four management areas. This timber would now be worth in the order of \$35-40 million in royalties and over \$200 million as sawmill output.

Quantifiable, but unaccounted, costs include damage to council roads by logging trucks. The non-quantifiable costs have included loss of wildlife, stream pollution, loss of topsoil, reduced water yields, loss of nutrients, loss of old-growth forest, loss of wilderness and destabilisation of ecosystems.

The Rainforest Decision reserved the few larger remnants of old-growth rainforest left within the Mt. Warning region, which would otherwise have already been irreversibly degraded, and part of the largest stand of old-growth rainforest and wet eucalypt forest left in NSW. These remnants of unmodified forest are priceless treasures where natural processes have been able to continue and from which we can assess the impacts of our activities upon other forests. At least a few bits have been left for future generations to experience and not sacrificed for dubious and transient financial returns.

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Dip S de Fr des Aff
EDWARD L. MURA
B Ec. LLB.

OUR REF BSW 3103/1

YOUR REF

DATE 5th August 1991

Mr J. Corkill
3 Albert Street
FOREST LODGE NSW 2037

Dear John

CORKILL v THE HERITAGE COUNCIL@

I advise that legal aid to \$5000.00 has been granted to date subject to enquiry as to your capacity and the capacity of your supporters to make contribution. Please advise me on this aspect.

The application for expedition is listed before Stein J on the 7th August 1991.

Yours sincerely,



Bruce Stephen Woolf

SUMMARY OF ISSUES and FINDINGS CORKILL vs HOPE, WEBSTER and OTHERS CHAE LUNDI STATE FOREST HERITAGE PROTECTION ORDER

The Government has an unlawful policy of not applying the Heritage Act 1977 to the natural environment (Judgment p.6.1-3; p.9.3)

This policy was refined by the Department of Planning adopting internal "Procedures" for dealing with applications for heritage orders over the natural environment (p.6-7).

The Procedures were developed to give effect to a decision made by the previous Minister for Planning David Hay, to limit the use of the Heritage Act to "built or cultural matters" (p.6.1)

The purpose of the Procedures was to redirect applications for the protection of the natural environment made under the Heritage Act, to other mechanisms (p.7.5) so that natural heritage orders would be "extremely rare". (p.9.2)

The Procedures were developed without reference to the Members of the Heritage Council (p.7.9 - p.8.1), although they concerned the circumstances in which the Council would recommend heritage orders.

The Department of Planning services both the Minister and the Heritage Council. It has divided loyalties, and there is a need for the Heritage Council to be serviced and advised by an independent secretariat (p.8.1)

The Director of the Department of Planning, Ms Gabrielle Kibble, made the following inaccurate and misleading statements in her submission to the Minister for Planning Mr Robert Webster:

- i) the Court had decided that compliance with the planning laws by a government developer more than adequately deals with Heritage Act matters (p. 10.7)
- ii) Mr Corkill's application was an "invalid use of the Heritage Act" (p.16.7)

The Minister for Planning rejected Mr Corkill's application for a stop work order at Chaelundi by applying the unlawful policy. Mr Webster failed to have regard to the merits of the case. He acted on inaccurate and misleading advice and on a policy which in effect suspended the operation of the Heritage Act. (p.20 - 21)

The Director told the Minister for Planning that it was beyond the resources of the Heritage Council and the Department of Planning to judge the technical validity of Mr Corkill's claim that logging Chaelundi would irreversibly damage its outstanding natural environmental values (p.16.2-4)

The Chairman of the Heritage Council, Robert Hope QC, not only agreed with the misleading submission to Mr Webster, but associated himself with the unlawful policy to refuse all applications for natural heritage orders where Government authorities manage the natural environment (p.19.5 - 20.1)

The Forestry Commission is bound by section 170 of the Heritage Act to prepare a Register of all areas under its control which are capable of conservation under the Heritage Act. Despite its duty to do so, the Forestry Commission has failed to prepare any such Register (p.21.2)

If the Government wants to suspend the application of the Heritage Act to Government agencies, or to the natural environment, it should amend the law, not adopt an inflexible policy "to defeat the express provisions of the legislation" (p.21)

Summary prepared by counsel for applicant, J. Corkill

LEGAL AID COMMISSION OF NSW



17 September 1991

Mr J R Corkill
3 Albert Street
FOREST LODGE NSW 2037

OUR REF: SY91R2877
WLC: DG(6)

YOUR REF:

TEL: 2195 891

Dear Mr Corkill

I enclose herewith a photocopy of a letter which I have today sent to your solicitors.

Yours faithfully

W L CHARGE
for Director

Encl.

LEGAL AID COMMISSION OF NSW



17 September 1991

Messrs Woolf Associates
Solicitors
DX 1556 SYDNEY

OUR REF: SY91R2877
WLC:DG(6)
YOUR REF: BSW 3104/1

TEL: 2195 891

Dear Sir/Madam

RE: CORKILL -v- FORESTRY COMMISSION OF NSW & OTHERS -
SECTION 99 PROCEEDINGS

At its meeting on Thursday, 12 September 1991, the Commission considered Mr Corkill's application for legal aid in relation to the above proceedings. It resolved that consideration of the application be deferred.

I would appreciate it if you could keep me informed of developments in the matter and provide a copy of the Judgment in due course.

I am arranging for a photocopy of this letter to be sent direct to your client.

Yours faithfully

A handwritten signature in black ink, appearing to be 'W L Charge', written in a cursive style.

W L CHARGE
for Director

COMMISSION OF NSW

OUR REF: SY91R2877ENV
WLC:SH(6)
YOUR REF: BSW 3104/1
TEL: 2195 891

October 1991

Woolf Associates
Solicitors
DX 1556 SYDNEY

FACSIMILE: 223 3530

Dear Sirs

RE: CORKILL v FORESTRY COMMISSION OF NSW

I acknowledge receipt, on 23rd October 1991 of facsimile letter dated 22nd October 1991. My previous, letter, dated 10th October 1991 was intended to inform you of the date of the Commission meeting and to invite you to submit any material, in addition to that already sent, which you considered relevant.

I confirm that, following your telephone enquiry this morning, I contacted your Office and in your absence, attempted to contact you at Mr Tim Robertson's Chambers.

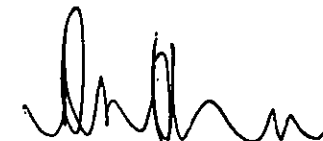
I informed Mr Robertson that, at its meeting on Thursday 24th October 1991, the Commission resolved to make a conditional lump sum grant of aid to Mr Corkill in relation to the Land & Environment Court proceedings subject to a contribution of \$1000 to be paid by Mr Corkill and involving the Commission in a maximum gross expenditure of \$10,000.

A formal letter setting out the terms of Legal Aid will be despatched as quickly as possible.

* | The Commission resolved to defer consideration of the Application For Legal Aid in relation to the Court of Appeal proceedings.

I am arranging to forward this letter to you by facsimile transmission.

Yours faithfully



W L CHARGE
FOR DIRECTOR

WITH COMPLIMENTS

JOHN CORKILL

**WOOLF
ASSOCIATES**

SOLICITORS

10th Fl, 82 ELIZABETH STREET
SYDNEY NSW 2000
TELEPHONE (02) 221 8522
FACSIMILE (02) 223 3530
DX 1558 SYDNEY

- ☒ For your information
- ☐ For your approval
- ☐ Please telephone us
- ☐ Please acknowledge receipt
- ☐ Please sign and return to us

LEGAL AID COMMISSION OF NSW

7 9 DEC 1991

OUR REF: SY91R2877(ENV)

WLC:SH(6)

YOUR REF:BSW 3121/1

TEL: 2195 891

6 December 1991

Messrs Woolf & Associates
Solicitors
DX 1556 SYDNEY

Sent by Facsimile: 223 3530

Dear Sir/Madam

RE: JOHN CORKILL v FORESTRY COMMISSION OF NSW

I acknowledge receipt of your letter dated 21st November and the enclosure which accompanied it.

Your client's application for legal aid in relation to the Court of Appeal proceedings was considered by the Legal Aid Commission at its last meeting. Additional information is requested from you as to:-

- i) why legal aid continues to be sought in view of the applicant's success in the proceedings; and
- ii) an estimate of your costs and disbursements in the matter.

The closing date for submission of material to the next Commission meeting is 5pm on Tuesday 10th December 1991. Accordingly, I am arranging for this letter to be sent to you by facsimile transmission.

Yours faithfully



W L CHARGE
FOR DIRECTOR

**WOOLF
ASSOCIATES
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ASSOCIATES:
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LLB, Dip B Admin.
Dip S de Fr des Aff
EDWARD L. MURA
B Ec LLB

OUR REF BSW 3121/1

YOUR REF SY91R2877(ENV)
WLC:SH(6)

DATE 12th December 1991

Mr W.L. Charge
Legal Aid Commission of NSW
DX 5
SYDNEY

Dear Sir

CORKILL v FORESTRY COMMISSION OF NSW
COURT OF APPEAL

We refer to your letter of the 6th December 1991.

We advise as follows in relation to the additional information which you request:

1. Why legal aid continues to be sought in view of the applicant's success in the proceedings.

The Legal Aid Commission members had the opportunity to consider our client's application prior to hearing of the appeal and prior to the determination of the appeal. The Commission members determined for the Commission's own purposes, and without regard to the effect on the applicant, to defer consideration of the application until after determination of the appeal. It is clear that dealing with an application in this way is totally against the spirit and purpose of the provision of Legal Aid, is unwarranted and unreasonable vis-a-vis an applicant and not a proper manner of considering an application.

Given the failure by the Commission to properly discharge its duty, we regard the Commission's question as a further example of the failure of the Commission members to appreciate that they have failed to properly address the matter.

In any event, legal aid is provided to 80% of solicitor client costs. Our client, being successful in the proceedings, is entitled to recover his taxed party party costs from the respondent. Legal aid is sought so that the applicant is not, or failing his ability to pay, his lawyers are not, obliged to bear the difference between the amount

allowed on a taxation of party party costs and the amount allowed by legal aid on solicitor client basis.

2. An estimate of costs and disbursements in the matter.

We estimate costs and disbursements of the appeal at \$20,000.00 for solicitor, and two counsel. You might note in this regard that the respondent was represented by the Solicitor General Mr Keith Mason Q.C., Mr Malcolm Craig Q.C. and Mr J. Maston of Counsel instructed by an officer of the State Crown Solicitor and one or perhaps two legal officers of the respondent.

We now request the Commission's early response to the application for the grant of aid in the Court of Appeal proceedings.

Yours faithfully,

**WOOLF
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SOLICITORS**

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Dip S de Fr des Aff
EDWARD L. MURA
B Ec. LLB.

OUR REBSW 3104/0

YOUR REF: Y91R2877 (ENV)
LC: DG (6)

DATE 1 October 1991

Mr W. Charge
Legal Aid Commission of NSW
Daking House
Level 6, 11-23 Rawson Place
SYDNEY NSW 2000

Dear Sir

CORKILL v FORESTRY COMMISSION OF NSW - CHAELUNDI STATE FOREST
SECTION 99 PROCEEDINGS - NO. 40169/91

We refer to your letter of 17 September, 1991.

Clearly this matter is one of significance which meets the tests set out in the latest guidelines issued by the Legal Aid Commission in respect of environmental matters.

We have provided the Commission with all the information requested by you and including a lengthy Memorandum of Advice from Mr T.F. Robertson of counsel. This sets out at length the factual and legal issues.

The case involves novel and significant issues of law. The case involves potential harm to a unique area of the natural environment of the State containing many species of animals recognised by experts as endangered or threatened and listed as such in Schedule 12 of the National Parks & Wildlife Act. The case involves clear public interest as evidenced by events in the forest and recognition given to the area and circumstances by the National Parks and Wildlife Service of NSW and State Pollution Control Commission.

In view of the urgency of potential harm to the environment it was necessary to commence court proceedings for interim relief. At the request of the logging companies and Forestry Commission the Land and Environment Court expedited and heard the matter on a final basis.

In previous applications of this nature, an officer of the Legal Aid Commission has approved aid or interim aid under delegated authority. In previous applications the matter has been referred urgently to the Environmental Consultative Committee for review and determination. Where that has occurred, in every case in which we have been involved, the Committee's decision has been accepted and notified to us as the grant of aid.

This application involves issues and significance of even greater merit and importance than previous applications.

Notwithstanding all of the above matters, you advised that you would not deal with the application under delegated authority but would refer the application to the Commission members for determination.

Notwithstanding all of the above matters you advised that this application would have to await the appointment of new Commissioners by the Attorney General.

When the Attorney General failed to make appointment of the new Commissioners, you yet advised that this application would still have to await the new appointment. This is notwithstanding the urgency and significance of the matter.

In the meantime, we kept you apprised of events in the Court and finally that the hearing of the case had been completed.

After new Commissioners were appointed to the Commission, this matter came before the Commission members. We understand that the only two environmental matters referred to the full Commission for decision were this case and another application for aid by Mr Corkill in relation to proceedings under the Heritage Act.

You now advise the Commission members decided to defer their consideration of the application and you have requested that we provide you with a copy of the judgement.

In our view the Commission has a responsibility beyond political considerations or influence to properly consider and determine applications. Where the opportunity is available, as it clearly was in this application the Commission by its members or officers ought to assist an applicant to know of his or her position prior to hearing of the proceedings or completion of the hearing of the proceedings and before judgement is given.

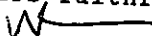
We have as mentioned above, provided you with all the material the Commission has requested to be provided and with Counsel's advice.

In the above dealings with this application including awaiting the judgement of the Court before determining whether to grant aid the Commission has in our respectful view seriously failed in its obligations in relation to the provision of legal aid.

As you may be aware, Judgment has now been given in the proceedings and our client has been successful. As requested, we enclose a copy of the Judgment.

We are informed a appeal has been lodged and the appellant is seeking expedition of the appeal. We now request that the application for aid be considered as a matter of great urgency with a view to the earliest grant of aid.

Yours faithfully



8-8-91

**WOOLF
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Dip S de Fr des Aff
EDWARD L. MURA
B Ec. LLB.

OUR REF BSW 3103/1

YOUR REF SY91R2719
WLC:DG(6)

DATE 3 October 1991

Legal Aid Commission
of NSW
DX 5
SYDNEY

BY FACSIMILE: 219 5906

Dear Sir

J.R. CORKILL - HERITAGE ACT PROCEEDINGS
LAND & ENVIRONMENT COURT NO. 40157 OF 1991

We note that in this matter application was made as a matter of urgency on 1 August 1991. Included with the application was a lengthy advice from Mr T.F. Robertson and Mr M. Anderson in respect of the application. We also advised you that in view of the urgency of the matter an application in the Land and Environment Court was being filed immediately.

On 2 August 1991 you telephoned us to inform us that as it happened the Environmental Review Committee met on 1 August 1991 and was able to give preliminary consideration to the application. The Committee recommended aid up to \$5000.00 for injunction but on the basis that there be enquiry whether there would be a contribution forthcoming from Mr Corkill.

In previous applications for aid which we have made to the Commission, where we have been advised by you that the Committee has recommended aid, it has always been the case that this meant that aid had been granted. We understood that this was the case in respect of this application.

However on 8 August 1991 Mr Terry Murphy, the Senior Assistant Director of the Commission telephoned us to say that in fact he had decided to refer the matter to the Commission. No reason was given for this decision. By your later correspondence (21 August 1991) you advised that in fact the question of whether formal grant of aid was to be made would be decided by the Legal Aid Commission itself which was to meet on 29 August 1991.

As set out in the lengthy Memorandum of Advice from counsel this matter is clearly one of significance both in relation to environmental issues, legal issues and public interest. In our respectful submission this aspect is beyond question.

In previous applications of this nature by this applicant and other applicants in which we have been involved, the Commission through its officers have recognised the importance and urgency of matters. Under delegated authority

interim grants of aid have been made. Where the Environmental Consultative Committee has made a recommendation, such recommendations have been universally implemented.

In our respectful submission the within application complies with the latest guidelines provided by the Commission in relation to grants of legal aid in environmental matters. Indeed the subject matter of this application should have given the matter high priority in respect of applications for aid in environmental matters.

You advised us by letter of 17 September 1991 that the Legal Aid Commission resolved on 12 September 1991 to refuse the application in relation to this matter.

In response to our request for reasons for such refusal you advised by letter of 18 September 1991 that the Commission provided no reasons for its decision. You advised that there is no right of appeal from the Commission's decision.

We note that of all the environmental matters, it is this matter and another matter of application by Mr Corkill which were referred to the Commission for decision. We have written separately in relation to the other matter.

In the above circumstances, it appears in our respectful submission that the Commission has failed to properly deal with this application.

We repeat our request for reasons for refusal of aid.

If the Commission has considered other legal opinion we request that you provide us with a copy of that opinion.

Yours faithfully



LEGAL AID COMMISSION OF NSW

OUR REF: 91/0115
MR:GD:NL

YOUR REF:

TEL: 2195 917

11 JUL 1991

8 July 1991

Mr Woolf
Hillman & Woolf
Solicitors
DX 10263
SYDNEY STOCK EXCHANGE

Dear Mr Woolf

Re: Legal Aid Environmental Policy

At the Commission meeting of 27 June, Commissioners resolved to adopt a range of policies to be applied in determining applications for legal aid in matters in the Land and Environment Court. I attach a copy of those policies.

Yours faithfully

Mark Richardson

M. RICHARDSON
Director

(attach)

910115

AVAILABILITY OF LEGAL AID FOR ENVIRONMENTAL
MATTERS IN THE LAND AND ENVIRONMENT
COURT AND ON APPEAL THEREFROM

1. GUIDELINES

A. LEGAL AID IS AVAILABLE FOR ENVIRONMENTAL MATTERS IN THE LAND AND ENVIRONMENT COURT AND ON APPEAL THEREFROM SUBJECT TO THE MERIT TEST, MEANS TEST AND THE FOLLOWING GUIDELINES:

(I) LEGAL AID IS ONLY AVAILABLE FOR MATTERS COMING WITHIN CLASS 1 AND CLASS 4 OF THE LAND AND ENVIRONMENT COURT ACT 1979.

(II) LEGAL AID IS NOT AVAILABLE FOR PROCEEDINGS COMING WITHIN CLASSES 2, 3 AND 5 OF THAT ACT.

(III) LEGAL AID IS ONLY AVAILABLE FOR PROCEEDINGS PROPOSED TO BE CONDUCTED IN THE LAND AND ENVIRONMENT COURT BEFORE A JUDGE.

B. LEGAL AID IS AVAILABLE FOR ENVIRONMENTAL MATTERS WHERE THERE IS A SUBSTANTIAL PUBLIC INTEREST AT STAKE MERITING ASSISTANCE.

C. IN DECIDING WHETHER THERE IS A SUBSTANTIAL PUBLIC INTEREST AT STAKE, REGARD SHOULD BE HAD TO AT LEAST THE FOLLOWING:

. WHETHER OR NOT THE ACTIVITY, OR PROPOSED UNDERTAKING IS LIKELY TO HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT IN NSW OR TO SUBSTANTIALLY AFFECT PUBLIC USE, OR ENJOYMENT OF THAT ENVIRONMENT.

. THE SCARCITY OF THE PARTICULAR ATTRIBUTE(S) OF THAT ENVIRONMENT.

. THE VALUE OF THAT ENVIRONMENT TO THE COMMUNITY OF NSW.

. COMMUNITY INTERESTS THAT MAY BE AFFECTED INCLUDING THE IMPACT ON THE SOCIAL AND CULTURAL NEEDS OF THE COMMUNITY.

. THE PROJECTED PUBLIC ECONOMIC BENEFIT OF THE ACTIVITY OR PROPOSED UNDERTAKING.

. THE OVERALL BENEFITS WHICH MAY FLOW TO THE COMMUNITY INCLUDING EMPLOYMENT, COMMUNITY SERVICES AND SOCIAL INFRASTRUCTURE.

- D. IN DECIDING WHETHER OR NOT TO GRANT LEGAL AID CONSIDERATION MUST BE HAD TO THE LIKELY COST TO THE COMMISSION OF THE PROCEEDINGS.
- E. APPLICANTS FOR LEGAL AID AND LEGALLY ASSISTED PERSONS OR GROUPS SHOULD, IN APPROPRIATE CASES, BE REQUIRED TO PURSUE SETTLEMENT OF THE MATTER BY MEDIATION OR NEGOTIATION.
- F. WHERE THE APPLICATION FOR LEGAL ASSISTANCE CONCERNS ENVIRONMENTAL MATTERS WHICH FALL WITHIN GUIDELINES 20-24 INCLUSIVE, SET FORTH IN THE GUIDELINES FOR THE PROVISION OF LEGAL OR FINANCIAL ASSISTANCE BY THE COMMONWEALTH OTHER THAN UNDER THE CONCILIATION AND ARBITRATION ACT, PUBLISHED BY THE ATTORNEY-GENERAL'S DEPARTMENT IN 1989 THEN THE APPLICATION SHOULD BE REFERRED TO THE COMMONWEALTH ATTORNEY-GENERAL FOR DETERMINATION IN ACCORDANCE WITH THE COMMONWEALTH'S GUIDELINES FOR LEGAL AID IN ENVIRONMENTAL MATTERS.

2. MEANS TEST

- (A) THE MEANS TEST TO BE APPLIED TO AN INDIVIDUAL APPLICANT SEEKING LEGAL AID FOR AN ENVIRONMENTAL MATTER IS MEANS TEST "A".
- (B) WHERE THE APPLICANT SEEKING LEGAL AID FOR AN ENVIRONMENTAL MATTER IS A GROUP OR REPRESENTS A GROUP THEN THE MEANS TO BE CONSIDERED ARE THE MEANS OF THE GROUP.

IN CONSIDERING THE MEANS OF THE APPLICANT/GROUP, REGARD SHOULD BE HAD TO THE FINANCIAL SUPPORT THAT WOULD BE AVAILABLE FROM THOSE MEMBERS OF THE COMMUNITY WHO WOULD BE LIKELY TO SUPPORT THE AIMS OF THE GROUP IN THE MATTER FOR WHICH AID IS SOUGHT.

- (C) IN CONSIDERING THE MEANS OF THE APPLICANT/GROUP REGARD SHOULD ALSO BE HAD TO THE APPLICANT'S ABILITY TO AFFORD THE COST OF THE LEGAL PROCEEDINGS HAVING REGARD TO HIS/HER ASSETS OR THEIR GENERAL ASSETS.
- (D) CONTRIBUTIONS ARE TO BE ASSESSED HAVING REGARD TO THE AVAILABLE FINANCIAL RESOURCES OF THE APPLICANT/GROUP.
- (E) IN APPROPRIATE CASES, LUMP SUM GRANTS SHOULD BE CONSIDERED.

3. DEFINITION OF ENVIRONMENTAL MATTERS

ENVIRONMENTAL MATTERS INCLUDE BUT ARE NOT LIMITED TO ANY ACTIVITY WHICH COULD SIGNIFICANTLY:

- . DIMINISH THE VISUAL, RECREATIONAL, SCIENTIFIC OR OTHER QUALITY OF THE ENVIRONMENT;
- . ENDANGER ANY SPECIES OF FAUNA OR FLORA;
- . CAUSE RISK TO THE HEALTH AND SAFETY OF THE ENVIRONMENT;
- . CAUSE POLLUTION TO THE ENVIRONMENT;
- . CAUSE ANY ENVIRONMENTAL PROBLEMS ASSOCIATED WITH THE DISPOSAL OF WASTE.

10 SEP 1991

OUR REF: SY91R2719
WLC:DG(6)
YOUR REF: BSW 3103/1

17 September 1991

TEL: 2195 891

Messrs Woolf Associates
Solicitors
DX 1556 SYDNEY

Dear Sir/Madam

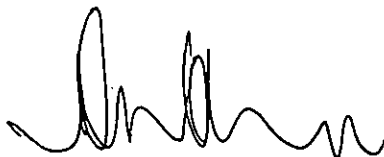
RE: J R CORKILL - HERITAGE ACT PROCEEDINGS

At its meeting on Thursday, 12 September 1991, the Legal Aid Commission resolved to refuse Mr Corkill's application for legal aid in relation to the above proceedings.

I confirm that this decision was communicated to you by telephone on Friday, 13 September 1991.

I have arranged for a photocopy of this letter to be sent direct to your client.

Yours faithfully



W L CHARGE
for Director

The Law Society of New South Wales 16 AUG 1991

Our Ref: DdeC:CJC:91/17/1981
Direct Line 220 0308

Your Ref: BSW:3017/01

15 August, 1991

Woolf Associates
Solicitors
DX 1556
SYDNEY

170 Phillip Street,
Sydney NSW 2000
Telephone (02) 220 0333
Telex AA73063 LAWSOC.
Fax 231 5809
DX 362 Sydney



Dear Sir,

GOVERNMENT INTERFERENCE IN THE OPERATION OF LEGAL AID

I acknowledge receipt of your letter of 6 August, 1991 wherein you express your concern regarding reports of a direction given by the Attorney General to the Legal Aid Commission in relation to expenditure in Land and Environment Court matters.

The comments attributed to the Attorney General in relation to this matter and other aspects of legal aid funding were certainly of concern to the Society, particularly in relation to a proposed reduction of funding to the Commission.

The Society responded to the reports and officers of the Society received coverage on a number of media outlets expressing our concerns regarding any budgetary cuts. In particular it was stressed that, while the Government might be empowered to determine budgetary allocations, it is a matter of utmost necessity that Government be not able to dictate to the Legal Aid Commission regarding the areas in which the Commission, as an independent statutory body, determines to distribute those funds.

The Government has appointed a ministerial advisory committee to look at tighter legal aid guidelines in the environmental law area and there is nothing to prevent the Government advising the Commission of its views. The Director of the Commission is a Councillor of this Society and if there is any question raised regarding the independence of the Commission he will have our support. You may have seen that the Attorney General canvassed the possibility of a proposed \$2.9 million cut in budget being supplemented by an increase in funds allocated to the Legal Aid Commission from the Law Society Solicitors' Trust Account Fund.

Whether such funding will be available is a matter for the Trustees of the Fund.

ME:5727/MB

Solicitors
Helping you is their practice



You can be assured that the Society will challenge any attempt by the Government to direct or interfere with the operation of the Commission. The Society will not be backward in taking issue with Government regarding the adequacy of funding for legal aid in New South Wales.

I thank you for taking the interest to write.

Yours faithfully,

DAVID de CARVALHO ,
President

19 September 1991

TEL: 2185 891

Messrs Woolf Associates
Solicitors
DX 1556 SYDNEY

Dear Sir/Madam

RE: J R CORKILL - HERITAGE ACT PROCEEDINGS

I acknowledge receipt today of facsimile letter dated 18 September 1991.

My telephone conversation with you was confirmed by letter dated 17 September 1991 which I trust that you have, by now, received.

In its resolution, the Legal Aid Commission provided no reasons for its decision to refuse the application for legal aid.

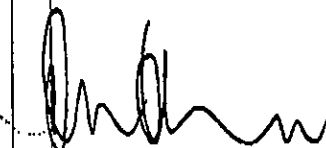
The Commission had available to it all material submitted in support of the application for legal aid, including the joint memorandum of Counsel dated 31 July 1991 which accompanied your letter to me dated 1 August 1991.

When the Commission delegates the exercise of any of its functions, pursuant to Section 89 of the Legal Aid Commission Act, certain rights of appeal to the Legal Aid Review Committee exist. However, no such appeal right exists in relation to decisions of the Legal Aid Commission itself.

The fact that the Environmental Consultative Committee had made a recommendation that a lump sum grant of legal aid be made was included in the material available to the Commission at its meeting.

In view of your request for an early response, I am sending this letter to you by facsimile transmission.

Yours faithfully



W L CHARGE
for Director

**WOOLF
ASSOCIATES
SOLICITORS**

10th Fl, 82 ELIZABETH STREET
SYDNEY NSW 2000
TELEPHONE (02) 221 8522
FACSIMILE (02) 223 3530
DX 1556 SYDNEY
BRUCE WOOLF
BA LLB Dip URP
ASSOCIATES:
BRIAN HILLMAN
LLB, Dip B Admin
Dip S de Fr des Aff
EDWARD L. MURA
B Ec. LLB.

OUR R BSW 3103/1

SY.91R2719(MB)

YOUR REF WLC:DG(6)

DATE 18th September 1991

Legal Aid Commission of NSW
DX 5
SYDNEY

Dear Sir

CORKILL v HOPE & WEBSTER
CHAE LUNDI STATE FOREST

We refer to telephone conversation on 9th September 1991 when you informed us that the Legal Aid Commission had refused the grant of aid.

We request your earliest written advices as to the refusal and reasons for refusal.

Could you also please advise whether the Commission took any independent advice from Counsel or otherwise in relation to this matter.

Please also inform us of rights of review of the initial decision for refusal.

We also record your earlier advices that the Environmental Committee of the Commission had recommended an initial grant of \$5000.00 in relation to the matter.

We request your earliest response.

Yours faithfully,

LEGAL AID COMMISSION OF NSW
COMMISSIONERS
AS AT 4 SEPTEMBER, 1991

CHAIRMAN: [Sec. 8(1)(a)]

Mr Brian W Rayment QC
10 Selborne Chambers
174 Phillip Street
SYDNEY NSW 2000

DX 375 SYDNEY

Telephone: 232 5112
Fax: 235 3235

COMMISSIONERS

Director: [Sec. 7(a)]

Mr Mark Richardson,
Director,
Legal Aid Commission of NSW,
Level 7, Daking House,
11-23 Rawson Place
SYDNEY 2000

DX 5 SYDNEY

Telephone: 219 5986
Fax: 219 5806

Acting

Mr Terry Murphy
~~Senior Assistant~~ Director
Legal Aid Commission of NSW
Level 7 Daking House
11-23 Rawson Place
SYDNEY 2000

DX 5 SYDNEY

Telephone: 219 5930
Fax: 219 5806

Representing the NSW Attorney General: [Sec.8(1)(b)]

Mr James Dwyer,
Messrs Allen Allen & Hemsley
Solicitors,
Level 46 MLC Centre,
19-29 Martin Place,
SYDNEY 2000

DX 105 SYDNEY

Telephone: 229 8765
Fax: 233 7022

Representative of Consumer & Community Welfare Interests:
[Sec.8(1)(f)]

Ms Robyn Sexton
~~Kingsford Legal Centre~~
DX 1328 SYDNEY

Telephone: 398 6366
Fax: 399 6683

42 Minimbah Rd
Northbridge 2063

Nominated by the Law Society of NSW:

[Sec.8(1)(d)]

Mr Richard W Gulley,
Gulley, Helene & Bullock,
State Bank Building,
239 Church Street,
PARRAMATTA 2150

DX 8237 PARRAMATTA

Telephone: 635 1944
Fax: 891 2254

Nominated by the NSW Bar Association:

[Sec.8(1)(c)]

Mr Paul Webb, QC,
10th Floor, Wentworth Chambers,
180 Phillip Street,
SYDNEY 2000

DX 396 SYDNEY

Telephone: 233 1380
Fax: 221 3724

Nominated by the Labor Council of NSW:

[Sec.8(1)(e)]

Mr Kevin Scott,
Federal Secretary,
Commonwealth Bank Officers
Association,
Level 7, 8 Quay Street,
SYDNEY 2000

Telephone: 281 6211
Direct Line: 281 6226
Fax: 281 6240

Representative of Bodies providing Community Legal Services:
[Sec.8(1)(g)]

Mr Simon Rice,
c/- Kingsford Legal Centre
DX 1328 SYDNEY

Telephone: 398 6366
Fax: 399 6683

Nominated by the Commonwealth Attorney General:
[Sec.8(1)(b1)]

Mr Shawn Gath
Advisor to the Minister for Justice
& Consumer Affairs, Senator the
Hon Michael Tate,
Room M.540 Parliament House
CANBERRA ACT 2600
Telephone: (062) 77 7260
Fax: (062) 73 4136

Mr James Gracie
Garfield Barwick Chambers
11/53 Martin Place
SYDNEY 2000
DX 735 SYDNEY
Telephone: 232 2001
Fax: 221 8006

Mr Stephen Norrish, QC,
Level 11 Forbes Chambers
185 Elizabeth Street
SYDNEY NSW 2000
DX 453 SYDNEY

Ms Megan Pitt
Deputy Director Legal Services
Australian Govt. Solicitors
Government Branch
9th Floor, St James Centre
111 Elizabeth Street
SYDNEY 2000
GPO Box 2727, SYDNEY 2001
DX 379 SYDNEY
Telephone: 581 7445
Fax: 581 7650

Telephone: 390 7777
Fax: 261 4600

Oliver Winder
Office of Legal Aid & Family Services
1st Floor, Bligh House
Cor National Circuit & Bligh St
BARTON ACT 2600

NEW SOUTH WALES
ATTORNEY GENERAL**CONFIDENTIAL**

5 July, 1991

CONFIDENTIAL

Mr Mark Richardson
Director
Legal Aid Commission of NSW
PO Box 47
RAILWAY SQUARE NSW 2000

Dear Mr Richardson

I write to advise you that the Government has established a Ministerial Advisory Committee on the use of legal aid in environmental matters. The Committee is comprised of the Hon J P Hannaford, MLC, Minister for Health and Community Services, the Hon T J Moore, MP, Minister for the Environment and the Hon R J Webster, MLC, Minister for Planning and Minister for Energy.

As you are aware, the Expenditure Review Committee has identified this area of legal aid for savings of \$500,000 per annum. I am confident that the advice of the Ministerial Advisory Committee will assist the Legal Aid Commission in realising these savings.

Yours faithfully


PETER COLLINS, MP
Attorney General

Noted MR 7/7/91
Please make to me
MR

LEGAL AID COMMISSION OF NSW



17 September 1991

Mr J R Corkill
3 Albert Street
FOREST LODGE NSW 2037

OUR REF: SY91R2719
WLC:DG(6)

YOUR REF:

TEL: 2195 891

Dear Mr Corkill

I enclose herewith a photocopy of a letter which I have today sent to your solicitors.

Yours faithfully

W L CHARGE
for Director

Encl.

LEGAL AID COMMISSION OF NSW



17 September 1991

Messrs Woolf Associates
Solicitors
DX 1556 SYDNEY

OUR REF: SY91R2719
WLC:DG(6)
YOUR REF: BSW 3103/1

TEL: 2195 891

Dear Sir/Madam

RE: J R CORKILL - HERITAGE ACT PROCEEDINGS

At its meeting on Thursday, 12 September 1991, the Legal Aid Commission resolved to refuse Mr Corkill's application for legal aid in relation to the above proceedings.

I confirm that this decision was communicated to you by telephone on Friday, 13 September 1991.

I have arranged for a photocopy of this letter to be sent direct to your client.

Yours faithfully

A handwritten signature in black ink, appearing to be 'W L CHARGE', written in a cursive style.

W L CHARGE
for Director



LAW REFORM COMMISSION

LEVEL 12, 189-193 KENT ST. SYDNEY 2000, NEW SOUTH WALES, AUSTRALIA
GPO BOX 5199, SYDNEY 2001, NEW SOUTH WALES, AUSTRALIA
TELEPHONE: (02) 252 3855 FAX: (02) 247 1054 DX1227 SYDNEY

NEW SOUTH WALES

12 November 1991

Ms Elisabeth Kirkby
Australian Democrats
Care of Parliament House
Macquarie Street
SYDNEY 2000

Dear Ms Kirkby

ENVIRONMENTAL LAW REFERENCE

The Commission has recently received a reference from the Attorney General to inquire into and review the methods of enforcing environmental laws and orders. A copy of the terms of reference are attached for your information.

The Commission proposes publishing an Issues Paper early in 1992 and a more detailed Discussion Paper later in the year. There will be extensive consultation on both these publications.

In preparing the Issues Paper, the Commission is keen to receive preliminary comments on the terms of reference. In addition, we would be pleased to receive any material that you feel may be of assistance to us. Our aim is to avoid unnecessary duplication of work and to receive submissions as soon as possible from persons with expertise in this area. We would be interested in meeting with you to discuss your particular concerns and areas of interest.

I will ensure you are kept informed of progress on the reference.

Yours sincerely,

Peter Hennessy
Executive Director

PASSED THIS INFO ON
TO TIM & MADE SURE
N.C.C. & ALL GROUPS
HAVE RECEIVED IT.

Also :-

P. Prineas

E.D.O.

M. Mobbs

2/12/91

ENVIRONMENTAL LAW REFERENCE

Pursuant to section 10 of the Law Reform Commission Act 1967, The Attorney General referred the following matters to the Law Reform Commission for inquiry and report by 30 December 1993:

- (i) the use of civil processes and remedies as a means of enforcing environmental laws;
- (ii) the law of standing in its application to environmental laws and the enforcement of court orders;
- (iii) the use of modern conflict resolution techniques to resolve disputes relating to the environment; and
- (iv) any incidental matter.

In undertaking work on this reference, the Commission will have regard to the desirability of uniformity of the laws of the States and Territories in the area of environmental protection.

LEGAL AID COMMISSION OF NSW

Bellongny SF
Corkill vs DPP

25 September 1991

OUR REF: WLC:MRW(6)
SY91S3255

YOUR REF:

TEL: 2195 891

Mr J R Corkill
3 Albert Street
FOREST LODGE NSW 2037

Dear Mr Corkill

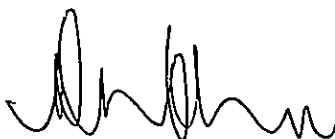
RE: YOUR APPLICATION FOR LEGAL AID

Pursuant to Section 34 of the Legal Aid Commission Act 1979, I enclose, for your information, a copy of a letter which I have today sent to your solicitors.

Your attention is drawn to the provisions of Section 56 of the Legal Aid Commission Act which enables you to appeal to the Legal Aid Review Committee if dissatisfied with any determination referred to in the enclosed letter.

Any such appeal must be in writing and must be lodged with the Commission within a period of 28 days from the date of receipt by you of this letter.

Yours faithfully



W L CHARGE
FOR DIRECTOR

Enc

LEGAL AID COMMISSION OF NSW



25 September 1991

OUR REF: WLC:MRW(6)
SY91S3255
YOUR REF: BSW 2475/0
TEL: 2195 891

Messrs Woolf Associates
Solicitors
DX 1556 SYDNEY

Dear Sir/Madam

RE JOHN ROBERT CORKILL

I acknowledge receipt of letter dated 17 September 1991 and the application for legal aid and verification of financial circumstances which accompanied it.

I confirm that I have already communicated to Mr Woolf the fact that legal aid will be refused in this matter because of your clients financial circumstances.

It has been determined that the application be refused as the applicant fails to satisfy the Commission's means test guidelines.

Your attention is drawn to Section 56 of the Act which enables your client to appeal to the Legal Aid Review Committee if dissatisfied with the determination referred to herein provided that such appeal is lodged with the Commission in writing within a period of 28 days after the date on which the notice of the determination was brought to your client's attention. Your attention is also drawn to Section 57 of that Act which provides for the adjournment of proceedings by a Court or Tribunal pending determination of an appeal by the Legal Aid Review Committee.

In accordance with the provisions of Section 34(2) of that Act a copy of this letter is being sent to your client.

Yours faithfully

W L CHARGE
FOR DIRECTOR