



Programme Guidelines for the Expensive Commonwealth Criminal Cases Fund

[Effective 6 May 2016 - 30 June 2018]

Table of Contents

Table of Contents	2
1. Role of the Community Grants Hub	3
2. Purpose	3
3. Programme objectives	3
4. Eligibility	3
4.1 Who is eligible to apply	3
4.2 Lodgement eligibility	3
4.3 Eligible matters	3
5. Assessment	4
6. Scope of funding	4
7. Application process	5
7.1 Application dates	6
7.2 Application requirements	6
7.3 Grouping of matters	6
7.4 How to submit an application	7
7.5 Request for further information.....	7
7.6 Decisions on applications	7
7.7 Notice of decision	7
7.8 Reporting information about successful applications.....	7
8. Responsibilities	8
9. Conflict of interest	8
10. Funding	9
11. Conditions of funding	9
11.1 Contracting arrangements.....	9
11.2 Taxation	9
11.3 Payment arrangements	9
11.4 Reporting requirements	9
11.5 Evaluation	9
12. Probity	9
13. Privacy	10
14. Record Keeping	11
15. Questions during the application process	11
16. Complaints mechanism	11

1.Role of the Community Grants Hub

- 1) The 2018 April funding round will be administered by the Community Grants Hub (the Hub) on behalf of the Attorney-General's Department under a Whole-of-Australian Government initiative to streamline grant processes across agencies.

2.Purpose

- 1) The purpose of the Expensive Commonwealth Criminal Cases Fund (ECCCF) is to reimburse legal aid commissions for costs incurred defending clients in serious, high-cost, Commonwealth criminal matters (such as drug importation, people smuggling, terrorism, fraud and slavery).

3.Programme objectives

- 1) To ensure that legal aid commissions have sufficient resources to provide a legal defence for people charged with serious Commonwealth criminal offences who cannot afford private legal representation.
- 2) To prevent the need for legal aid commissions to reallocate funding away from other Commonwealth service priorities, such as family law matters, to meet the cost of expensive Commonwealth criminal law matters.
- 3) To prevent Commonwealth criminal law proceedings from being adjourned, postponed, or stayed in accordance with the principle established by the High Court's decision in *Dietrich v The Queen* (1992) 177 CLR 292 due to a lack of legal representation for an indigent accused.

4.Eligibility

4.1 Who is eligible to apply

- 1) Only legal aid commissions can apply for reimbursement under the ECCCF.
- 2) A legal aid commission is a statutory body established pursuant to legislation in the relevant state or territory to provide legal aid services.

4.2 Lodgement eligibility

- 1) Applications may be lodged before the commencement of criminal law proceedings, or at any time during proceedings.
- 2) Applications may also be lodged after proceedings have been finalised.
- 3) Applications will not be accepted if more than six months have passed since the conclusion of the matter, unless the decision-maker accepts that there is a reasonable explanation for the delay in lodging the application.
- 4) Reimbursement may be sought for expenses incurred prior to the date that an application is lodged.

4.3 Eligible matters

- 1) Applications for reimbursement under the ECCCF will only be accepted if:
 - a) the amount sought relates to Commonwealth criminal law proceedings, and

- b) the cost, or estimated cost, exceeds \$40 000.
- 2) Reimbursement for the cost of appeals will only be considered in cases where counsel (other than counsel who appeared at the trial) certifies that there are reasonable prospects of success. This does not apply to appeals brought by the Commonwealth Director of Public Prosecutions.

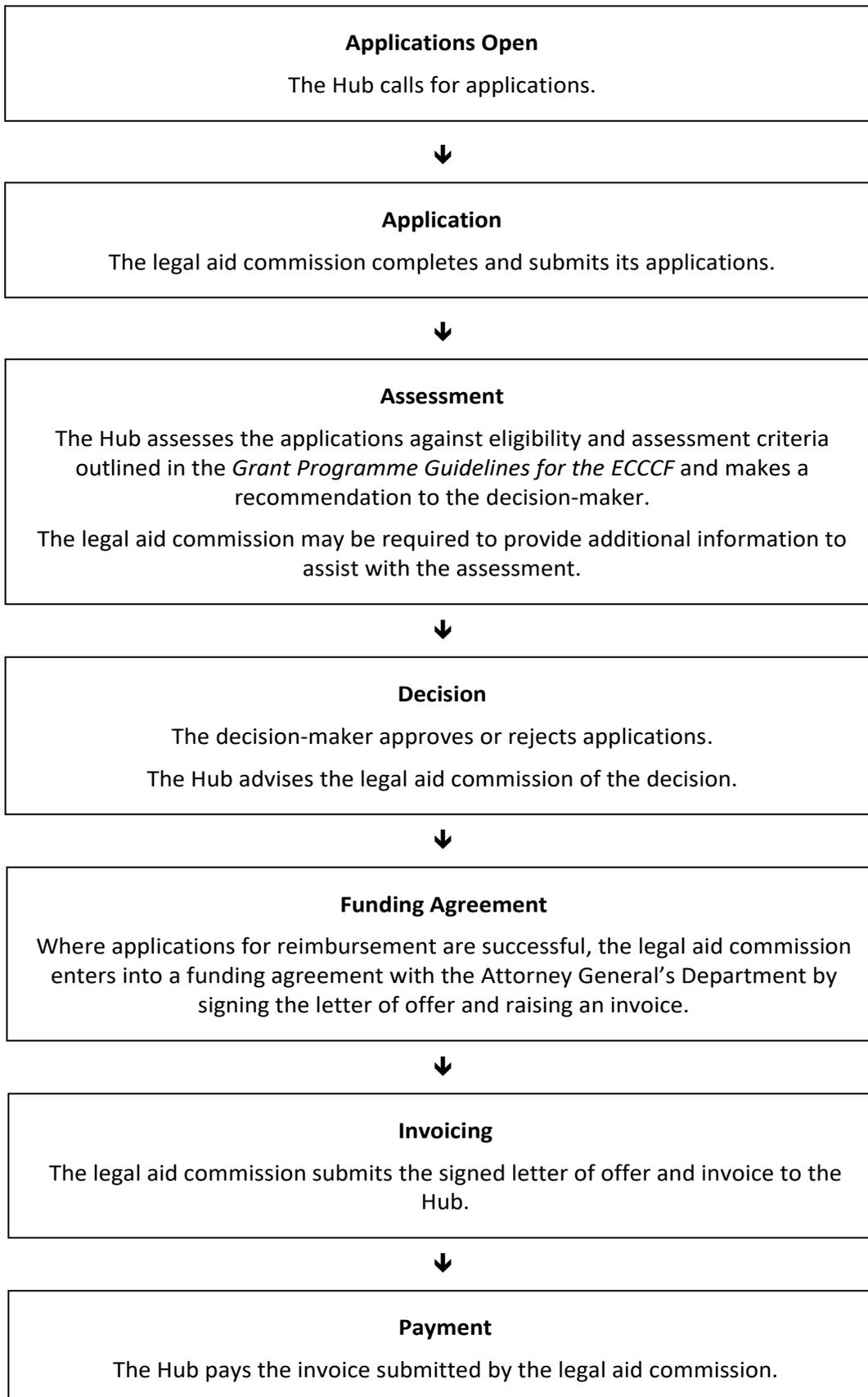
5. Assessment

- 1) The Hub in consultation with the Attorney-General's Department, will assess the appropriateness of reimbursement against the criteria in these guidelines and provide a recommendation in the form of a detailed decision note to the delegate for approval.
- 2) If an application for reimbursement does not meet the eligibility requirements set out in part 3 of these guidelines, the Hub will refuse the application without any further assessment.
- 3) The Hub will assess, using information provided in the application for reimbursement form, whether approval of the application is consistent with the purpose and programme objectives of the ECCCCF set out in these guidelines.
- 4) The Hub will also assess, using information provided in the application for reimbursement form, if the costs sought are reasonable on the basis of the following criteria:
 - a) Whether the applicant has taken, or will take, all reasonable steps within their control to contain the cost of the proceedings.
 - b) Whether the applicant has made a reasonable estimate of likely expenditure using available information about the likely direction and length of proceedings.

6. Scope of funding

- 1) Reimbursement will not be provided for:
 - a) matters where costs have been awarded in favour of the defendant, or
 - b) matters where costs could be sought under the *Proceeds of Crime Act 2002* (Cth).
- 2) Where a matter has previously received reimbursement from the ECCCCF, the amount to be considered for reimbursement will be the amount expended since the last application for that matter.
- 3) The decision-maker may approve reimbursement of all or part of the costs incurred by an applicant in providing legal assistance in a serious, high-cost Commonwealth criminal matter.
- 4) In the event that there are insufficient funds remaining in the ECCCCF to meet all applications for reimbursement, the department may allocate to each applicant a proportion of the amount sought. After consideration of eligibility and the assessment criteria, the department will also consider the following factors:
 - a) the amount already reimbursed from the ECCCCF to each applicant within the same financial year,
 - b) the amount sought by each applicant relative to the amount of legal assistance funding they receive under the *National Partnership Agreement on Legal Assistance Services*, and
 - c) the impact that non-approval of the reimbursement will have on the applicant's ability to provide legal assistance for other Commonwealth legal assistance service priorities, such as complex family law matters that fall within priorities as specified in the *National Partnership Agreement on Legal Assistance Services (2015-20)*, within the same financial year.

7. Application process



7.1 Application dates

- 1) There will be three funding rounds each financial year.
- 2) The Hub, on behalf of the Attorney-General's Department, will ordinarily request that applications be submitted by:
 - a) 30 April,
 - b) 31 August, and
 - c) 30 November.
- 3) Applications received by the Hub after the requested date will not be considered until the next funding round.

7.2 Application requirements

- 1) Applications must be:
 - d) submitted on the application forms provided,
 - e) completed in full, and
 - f) signed by the Director / Chief Executive Officer of the legal aid commission making the application.

7.3 Grouping of matters

- 1) To support the efficient running of matters being managed together by the Commonwealth Director of Public Prosecutions, legal aid commissions and the courts, applications may be submitted that cover costs for the representation of a group of clients or proceedings.
- 2) The Hub, in consultation with the Attorney-General's Department, has the discretion to determine whether or not the grouping of matters into a single application is appropriate.
- 3) Circumstances that the Hub and the Attorney-General's Department may consider it appropriate for matters to be grouped include where:
 - g) the clients are co-accused or co-defendants,
 - h) the clients are being prosecuted as part of the same criminal trial,
 - i) the clients' matters are being run together, or
 - j) a combination of the above.
- 4) A separate application must be submitted for each separate group of matters.

7.4 How to submit an application

- 1) Applications should be submitted by email to support@communitygrants.gov.au.
Please include in the *Subject* line of your email: 2017-1089 ECCCCF
Please keep a copy of your application.
- 2) Faxed applications will not be accepted.

7.5 Request for further information

- 1) The Hub may, by notice in writing, ask an applicant to provide additional information to assist with the assessment of an application.
- 2) If the information is not provided within the time specified, the Hub may refuse to assess the application without further consideration.

7.6 Decisions on applications

- 1) ECCCCF applications will be approved by an officer within the Attorney-General's Department (the decision-maker), in accordance with that officer's financial delegation limits.
- 2) Approval to reimburse an application, in full or part, is entirely at the discretion of the decision-maker.
- 3) When making a decision on an application, the decision-maker will consider:
 - a) the information provided in the application against the requirements in the guidelines (including eligibility and assessment criteria),
 - b) whether any specific requirements will need to be imposed as a condition of funding, and
 - c) whether the application represents a proper use and management of relevant money, as required by the *Public Governance, Performance and Accountability Act 2013* and the Commonwealth Grants Rules and Guidelines.
- 4) There is no appeal mechanism for decisions to approve or not approve a grant.

7.7 Notice of decision

- 1) Applicants will be advised by letter and/or email of the outcome of applications within 28 days, where practicable, on receipt of all information required.
- 2) Advice to successful applicants may contain specific conditions attached to the funding.

7.8 Reporting information about successful applications

- 1) If successful, your grant will be listed on GrantConnect no later than 21 calendar days after the date of effect as required by Section 5.3 of the CGRGs.

8.Responsibilities

- 1) Applicants have the following responsibilities:
 - a) to give honest and accurate information in an application and to the Hub and the Attorney-General's Department when required, and
 - b) to tell the Hub and the Attorney-General's Department if the circumstances of the applicant change before the Attorney-General's Department makes a decision on the application, if the change may affect the application.
- 2) If an applicant does not adhere to the above responsibilities, the Hub or the Attorney-General's Department may refuse to consider an application.
- 3) An applicant's participation in any stage of the ECCCCF application process, or in relation to any matter concerning the process, is at the applicant's sole risk, cost and expense. The Hub and the Attorney-General's Department will not be responsible for any costs or expenses incurred by an applicant in preparing or lodging an application or in taking part in the process.
- 4) The Hub and the Attorney-General's Department will not accept responsibility for any misunderstanding arising from the failure by an applicant to comply with these guidelines or arising from any discrepancies, ambiguities, inconsistencies or errors in an application.

9.Conflict of interest

- 1) Applicants must declare any existing conflicts of interest, or that to the best of their knowledge there is no conflict of interest, that would impact on or prevent an applicant from fulfilling the requirements contained within a funding agreement.
- 2) A conflict of interest may exist, for example, if the applicant or any of its personnel:
 - a) has a relationship (whether professional, commercial or personal) with a party who is able to influence the application appraisal process, such as a department staff member,
 - b) has a relationship with, or interest in, an organisation, which is likely to interfere with or restrict the applicant in carrying out the proposed activities fairly and independently, or
 - c) has a relationship with, or interest in, an organisation from which they will receive personal gain as a result of the granting of funding under the ECCCCF programme.
- 3) Where an applicant identifies a conflict of interest, the application should clearly demonstrate how the conflict will be managed and any related issues.
- 4) Where an applicant subsequently identifies that an actual, apparent or potential conflict of interest exists or might arise in relation to an application, the applicant must inform the Hub and the Attorney-General's Department in writing immediately.
- 5) All personnel involved in the assessment of applications are required to declare whether they have a real or perceived conflict of interest. Where conflicts do arise they will be managed according to the Community Grants Hub's policy for managing conflicts of interest.
- 6) Applicants may raise any concerns they have regarding conflicts of interest by emailing the Hub through support@communitygrants.gov.au.

10. Funding

- 1) The total core funding available for the ECCCCF in 2015-16 is approximately \$3.8 million.
- 2) Future Budget allocations are \$4.6 million for 2016-17 and \$3.7 million for 2017-18. These are subject to change, based on funding allocations to the ECCCCF appropriated by Government in the Budget.

11. Conditions of funding

11.1 Contracting arrangements

- 1) Successful applicants will be required to enter into a funding agreement with the Commonwealth of Australia, represented by the Attorney-General's Department.
- 2) A standard letter of offer template will be published on [GrantConnect](#) and the [Community Grants Hub](#) websites.

11.2 Taxation

- 1) Grant payments will be exclusive of GST.
- 2) The Attorney-General's Department reports details of all grant payments to the Australian Tax Office.

11.3 Payment arrangements

- 1) Before any payment can be made, funding recipients will be required to provide:
 - a) an invoice for the amount of the payment, and
 - b) evidence of meeting any specific conditions stipulated in the funding agreement.

11.4 Reporting requirements

- 1) Funding recipients may be required to provide reports, as stipulated in the funding agreement.

11.5 Evaluation

- 1) Evaluations may be undertaken, from time to time, to determine the effectiveness of grant activities in contributing to government objectives. Funding recipients may be required to provide information to assist in such evaluations.

12. Probity

- 1) The Australian Government is committed to ensuring that the process for providing reimbursements under the ECCCCF is transparent and undertaken in accordance with published grant programme guidelines.
- 2) Grant programme guidelines may be varied from time to time by the Australian Government, as the needs of the programme dictate. Amended grant programme guidelines will be published on [GrantConnect](#) and the [Community Grants Hub's](#) website.

13. Privacy

- 1) We treat your personal information according to the 13 Australian Privacy Principles and the Privacy Act 1988. This includes letting you know:
 - what personal information we collect
 - why we collect your personal information
 - who we give your personal information to
- 2) You are required, as part of your application, to declare your ability to comply with the Privacy Act 1988, including the Australian Privacy Principles and impose the same privacy obligations on any subcontractors you engage to assist with the activity. You must ask for the Australian Government's consent in writing before disclosing confidential information.
- 3) Your personal information can only be disclosed to someone else if you are given reasonable notice of the disclosure; where disclosure is authorised or required by law or is reasonably necessary for the enforcement of the criminal law; if it will prevent or lessen a serious and imminent threat to a person's life or health; or if you have consented to the disclosure.
- 4) The Australian Government may also use and disclose information about grant applicants and grant recipients under the Program in any other Australian Government business or function. This includes giving information to the Australian Taxation Office for compliance purposes.

We may reveal confidential information to:

- employees and contractors of our department so we can research, assess, monitor and analyse our programs and activities
 - employees and contractors of other Commonwealth agencies for any purposes, including government administration, research or service delivery
 - other Commonwealth, State, Territory or local government agencies in program reports and consultations
 - the Auditor-General, Ombudsman or Privacy Commissioner
 - the responsible Minister or Parliamentary Secretary
 - a House or a Committee of the Australian Parliament.
- 5) We may share the information you give us with other Commonwealth agencies for any purposes including government administration, research or service delivery and according to Australian laws, including the:
 - Public Service Act 1999
 - Public Service Regulations 1999
 - Public Governance, Performance and Accountability Act
 - Privacy Act 1988
 - Crimes Act 1914
 - Criminal Code Act 1995
 - 6) We'll treat the information you give us as sensitive and therefore confidential if it meets all of the four conditions below:
 - a) you clearly identify the information as confidential and explain why we should treat it as confidential
 - b) the information is commercially sensitive
 - c) revealing the information would cause unreasonable harm to you or someone else

d) you provide the information with an understanding that it will stay confidential.

The grant agreement will include any specific requirements about special categories of information collected, created or held under the grant agreement.

14. Record Keeping

- 1) Applicants should comply with relevant record keeping legislation within their jurisdiction and maintain normal business records of materials used to support applications to the ECCCF, including evidence of expenditure, for a period of up to 5 years.

15. Questions during the application process

- 1) Only questions from invited applicants will be responded to during the application period. Please call the Community Grants Hub on 1800 020 283 or email to support@communitygrants.gov.au. The Community Grants Hub will respond to emailed questions within five working days.
- 2) The question period will close five business days before the funding round close date. Following this time, only questions relating to using and/or submitting the application form will be answered.

16. Complaints mechanism

- 1) Complaints about the Program
 - a) The department regards complaints as a way of both assessing and improving its performance. The department will endeavour, where possible, to ensure that complaints are resolved promptly, fairly, confidentially and satisfactorily and that processes are reviewed as a result.
 - b) If an applicant considers that a matter has not been resolved satisfactorily, they may submit a complaint by using the Attorney-General's Department online enquiries, feedback and complaints form or by contacting the Complaints Handling Area.
 - Telephone: (02) 6141 3001
 - Complaints form: <https://www.ag.gov.au/About/Pages/Contactus.aspx>
- 2) Complaints about the Process
 - a) Applicants can contact the complaints service with complaints about Community Grants Hub's service(s) or the application process.
 - b) Details of what constitutes an eligible complaint can be provided upon request by the Community Grants Hub. Applicants can lodge complaints using the complaints form on the Department's website or by phone or mail.
 - Telephone: 1800 634 035
 - Mail: Complaints
GPO Box 9820
Canberra ACT 2601

3) Complaints to the Ombudsman

- a) If you do not agree with the way the Hub or the Attorney-General's Department has handled your complaint, you may complain to the Commonwealth Ombudsman. The Ombudsman will not usually look into a complaint unless the matter has first been raised directly with the relevant Commonwealth entity.

The Commonwealth Ombudsman can be contacted on:

- Phone (Toll free): 1300 362 072
- Email: ombudsman@ombudsman.gov.au
- Website: www.ombudsman.gov.au