

# Expensive Commonwealth Criminal Cases Fund Grant Opportunity Guidelines

|                             |   |
|-----------------------------|---|
| Opening date:               | 2 August 2018   |
| Closing date and time:      | 2:00pm AEST on 30 August 2018   |
| Commonwealth policy entity: | Attorney-General's Department   |
| Enquiries:                  | If you have any questions, please contact the Community Grants Hub by phone on 1800 020 283 or by email at <a href="mailto:support@communitygrants.gov.au">support@communitygrants.gov.au</a> . |
| Date guidelines released:   | 2 August 2018   |
| Type of grant opportunity:  | Restricted non-competitive  |

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# 1. Expensive Commonwealth Criminal Cases Fund Grant Opportunity Processes

## **The Program is designed to achieve Australian Government objectives**

This grant opportunity is part of the above Grant Program which contributes to Attorney-General's Department (AGD) Outcome 1.4 Justice Services - Expensive Commonwealth Criminal Cases Fund. The AGD works with stakeholders to plan and design the Grant Program according to the [\*Commonwealth Grants Rules and Guidelines\*](#).



## **The grant opportunity opens**

The Community Grants Hub (the Hub) publish the grant opportunity guidelines and advertise on the [GrantConnect](#) and [Community Grants Hub](#) websites.



## **You complete and submit a grant application**

You must read these grant guidelines before you submit your application. These guidelines can be found on [GrantConnect](#), the Australian Government's whole-of-government grants information system. Note: Any addenda for this grant opportunity will be published on GrantConnect, and by registering on this website you will be automatically notified of any changes.



## **The Hub assesses all grant applications**

The Hub assesses the applications against the eligibility criteria and will notify you if you are not eligible. We then assess your application against the assessment criteria.



## **The Hub will make grant recommendations to AGD**

The Hub will provide advice to the decision maker in the AGD on the merits of each application.



## **Grant Decisions are made**

The decision maker, a senior officer within the AGD decides which grant applications are successful.



**The Hub will notify you of the outcome**

The Hub will advise you of the outcome of your application in writing.



**The Hub enters into a letter of agreement**

The Hub, on behalf of the AGD, will enter into a letter of agreement with successful applicants.



**You submit an invoice to the Hub**

The legal aid commission submits the signed letter of agreement and invoice to the Hub.



**The Hub makes payment**

The Hub pays the invoice, on behalf of the AGD, submitted by the legal aid commission.

## 1.1 Role of the Community Grants Hub

This grant opportunity will be administered by the Hub on behalf of the Attorney-General's Department under a Whole-of-Australian Government initiative to streamline grant processes across agencies.

## 1.2 About the grant program

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).

The expected outcomes of the Program are:

1. 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. legal aid commissions do not need 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. Commonwealth criminal law proceedings are prevented 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.

The Hub, on behalf of the AGD, will seek applications for reimbursements three times each financial year. The table below identifies the open and close dates for the three selection processes in 2018-19.

The Program will be undertaken according to the *Commonwealth Grants Rules and Guidelines 2017* ([CGRGs](#)).

**Table 1: Opening and closing dates**

|   | Open            | Close                           |
|---|-----------------|---------------------------------|
| 1 | 2 August 2018   | 2:00pm AEST on 30 August 2018   |
| 2 | 1 November 2018 | 2:00pm AEDT on 29 November 2018 |
| 3 | 2 April 2019    | 2:00pm AEST on 30 April 2019    |

## 1.3 About the grant opportunity

These guidelines contain information for the ECCCCF grant round.

This document sets out:

- The purpose of the grant opportunity
- the eligibility and assessment criteria
- how grant applications are checked and assessed
- responsibilities and expectations in relation to the opportunity.

You must read this document before filling out an application.

## 2. Grant amount

A total of \$3.722 million is available in 2018-19 (exclusive of GST).

## 3. Grant eligibility criteria

We cannot consider your application if it does not meet **all** the eligibility criteria.

### 3.1 Who is eligible to apply for a grant?

Only legal aid commissions can apply for reimbursement under the ECCCCF.

A legal aid commission is a statutory body established pursuant to legislation in the relevant state or territory to provide legal aid services.

To be eligible to apply, you must be one of the listed invited organisations and have received an invitation to apply through GrantConnect.

| <b>Invited Organisation</b>             |
|---|
| Legal Aid Commission ACT                |
| Legal Aid Commission of NSW             |
| Northern Territory Legal Aid Commission |
| Legal Aid Queensland                    |
| Legal Services Commission of SA         |
| Legal Aid Commission of Tasmania        |
| Victoria Legal Aid                      |
| Legal Aid Commission of WA              |

The list of eligible applicants was determined in line with the purpose and objective of the ECCCCF to reimburse legal aid commissions for costs incurred defending clients in serious, high cost, Commonwealth criminal matters.

No further organisations will be invited to apply.

## 3.2 Who is not eligible to apply for a grant?

You are not eligible to apply for this grant opportunity if you are not one of the legal aid commissions invited.

# 4. Additional eligibility criteria

## 4.1 Eligible applications

Eligible applications must meet the following requirements:

- 1) Be completed in full
- 2) the amount sought must relate to a commonwealth criminal law matter
- 3) the actual total cost or estimated total cost of the matter must be \$40,000 or more for all new matters
- 4) applications may be submitted before proceedings commence or at any time during proceedings.
- 5) if the matter is finalised, the application must be submitted within six months of the matter concluding, unless the applicant can provide a reasonable explanation for the delay.
- 6) if funding is sought for appeal costs, counsel must provide certification that there are reasonable prospects of success. This does not apply to appeals brought by the Commonwealth Director of Public Prosecutions.
- 7) funding may be sought for costs incurred prior to the application being submitted.

Applications that do not meet these eligibility requirements will not be eligible and will not progress to assessment.

## 4.2 Ineligible applications

Applications will not be eligible if:

- costs have been awarded in favour of the defendant
- costs could be sought under the *Proceeds of Crime Act 2002* (Cth).

## 5. Grouping of matters

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.

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.

Circumstances that the Hub and the Attorney-General's Department may consider it appropriate for matters to be grouped include where:

- the clients are co-accused or co-defendants
- the clients are being prosecuted as part of the same criminal trial
- the clients' matters are being run together or
- a combination of the above.

A separate application must be submitted for each separate group of matters.

## 6. The grant selection process

Firstly, the Hub will check your application for completeness. Applications with missing information will be notified via email and have 5 days to provide the requested information. If missing information is not provided within the required timeframe, the application will not progress to the next stage of assessment.

Secondly, the Hub will assess completed applications against the eligibility criteria. Only eligible applications will move to the next stage and be considered through a restricted non-competitive grant process. Lastly, the Hub will assess your application to confirm it addresses the assessment criteria.

You may be contacted during the selection process to clarify or correct any anomalies found within your application, if the anomalies are not corrected and the application is deemed unsuccessful you will be notified by the Hub.

The Hub will collate the assessment outcomes into a report and provide to delegate in the Legal Services Policy Division of the Attorney-General's Department.



## 7. The assessment criteria

After consideration of eligibility, your application will be assessed against the following criteria:

- 1) the application is consistent with and meets the purpose and program objectives of the ECCCCF as set out in these grant opportunity guidelines (*Guideline 1.2*)
- 2) the applicant has taken, or will take, all reasonable steps within their control to contain the cost of the proceedings
- 3) the applicant has made a reasonable estimate of likely expenditure using available information about the likely direction and length of proceedings
- 4) whether the amount sought by each applicant is relative to the amount of legal assistance funding they receive under the *National Partnership Agreement on Legal Assistance Services*
- 5) 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
- 6) 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*
- 7) 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.

## 8. The grant application process

### 8.1 Overview of application process

You must read these grant opportunity guidelines, the letter of agreement and the application form before you submit an application.

You are responsible for ensuring that your application is complete and accurate. Giving false or misleading information will exclude your application from further consideration.

You must address all of the eligibility and assessment criteria to be considered for a grant. Please complete each section of the application form and make sure you provide the information we have requested.

The application form declaration must be completed by the Director / CEO of the legal aid commission making the application.

Please complete one application for each matter or group of matters for which the commission is seeking reimbursement.

Please keep a copy of your application/s and any supporting papers including evidence that an independent counsel certified that there are good prospects of success under an appeals process.

## 8.2 Application process timing

Submit your application by the closing time and date below.

If an application is late or the Community Grants Hub is requested to approve a lodgement after the closing date, the Community Grants Hub may determine that there were exceptional circumstances beyond the applicant's control that meant they could not meet the deadline. Examples of exceptional circumstances could include, but may not be limited to:

- Community Grants Hub infrastructure failures
- natural disasters
- power outages affecting the ability of the applicant to submit their application by the deadline
- death or disability of key personnel.

Information on the Community Grants Hub [late application policy](#) is available on the [Community Grants Hub](#) website.

**Table 2: Expected timing for this grant opportunity**

| Activity                                   | Timeframe   |
|--|---|
| Application period                         | Open: 2 August 2018<br>Close: 2:00pm AEST on 30 August 2018 |
| Assessment of applications                 | 4 weeks   |
| Approval of outcomes of selection process  | 3 weeks   |
| Negotiations and award of grant agreements | 1-3 weeks   |
| Notification to unsuccessful applicants    | 1 week  |
| Activity commences                         | November 2018   |

## 8.3 Completing the grant application

You must submit your grant application using the application form, which is available on the [GrantConnect](#) website. The Application Form can only be accessed by invitees for this grant opportunity.

The application form declaration must be completed by the Director / CEO of the legal aid commission making the application.

Applications should be submitted by email to [support@communitygrants.gov.au](mailto:support@communitygrants.gov.au). Please include in the Subject line of your email: 2018-2186 ECCCF. The Community Grants

Hub will not provide application forms or accept applications for this grant opportunity by fax or mail.

You must make sure that your application is complete, accurate and submitted by the closing date and time in accordance with these Guidelines.

If you find a mistake in your application after it has been submitted, you should contact the Community Grants Hub by phone on 1800 020 283 or by email at [support@communitygrants.gov.au](mailto:support@communitygrants.gov.au) straight away. The Community Grants Hub may ask you for more information, as long as it does not change the substance of your application. The Community Grants Hub does not have to accept any additional information, nor requests from applicants to correct applications after the closing time.

## 8.4 Questions during the application process

Only invited applicants' questions 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](mailto:support@communitygrants.gov.au). The Community Grants Hub will respond to emailed questions within five working days. Answers to questions will be posted on [GrantConnect](#) and only accessible by invited applicants.

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.

## 9. Assessment of grant applications

### 9.1 Who will assess applications?

An assessment team will assess all eligible and compliant applications. The assessment team will be comprised of staff from the Hub. The assessment team will undertake training to ensure consistent assessment of all applications.

If the selection process identifies unintentional errors or requires clarification in your application, you may be contacted to correct or explain the information.

### 9.2 Who will approve grants?

The Hub will make recommendations to the decision delegate in the Legal Assistance Branch of the AGD.

The decision delegate is an officer within the Legal Services Policy Division of the AGD, who has the appropriate financial delegation limit. The Decision Delegate will make the final decision to approve a grant.

The decision delegate's decision is final in all matters, including:

- the approval of the reimbursement
- the funding amount to be reimbursed, in full or part.
- allocating a proportion of the amount sought to each applicant, in the event that there are insufficient funds remaining in the ECCCCF to reimburse all applications.

There is no appeal mechanism for decisions to approve or not approve a grant.

## 10. Notification of application outcomes

You will be advised of the outcomes of your application in writing, following a decision by the decision delegate. If you are successful, you will also be advised about any specific conditions attached to the grant in the Letter of Agreement.

If your application is found unsuccessful you will be notified by the Hub. You may submit a new application on the matter, which addresses the anomalies and meets the eligibility and assessment criteria, during a future selection process.

### 10.1 Feedback on your application

Individual feedback will not be provided for this grant opportunity.

## 11. Successful grant applications

### 11.1 The grant agreement

If you are successful and you choose to accept a grant offer, you must enter into a legally binding grant agreement with the Commonwealth represented by the AGD and managed by the Hub.

The Hub will use the Commonwealth Letter of Agreement which can be found on the [GrantConnect](#) and [Community Grants Hub](#) websites.

A schedule may be used to outline the specific grant requirements. Any additional conditions attached to the grant will be identified in the grant offer or during the grant agreement negotiations.

### 11.2 How the grant will be paid

Reimbursements will be paid on:

- receipt of an invoice for the amount of the payment, as approved by the decision delegate.
- evidence of meeting any specific conditions stipulated in the Letter of Agreement, if applicable.

The Letter of Agreement will state the maximum amount to be paid to your organisation and if applicable any reporting requirements.

If costs are awarded to the defendant after determination, the funds provided must be returned to the Attorney-General's Department.

## 12. Announcement of grants

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*.

## 13. Delivery of grant activities

### 13.1 Your responsibilities

Applicants are responsible for:

- giving honest and accurate information in an application and to the Hub and the AGD when required
- advising the Hub and the AGD if the circumstances of the applicant change before the AGD makes a decision on the application, if the change may affect the application
- complying with relevant record keeping legislation within their jurisdiction and maintaining normal business records of materials used to support applications to the ECCCCF, including evidence of expenditure, for a period of up to 5 years
- complying with the terms and conditions in the Letter of Agreement.

If an applicant does not adhere to the above responsibilities, the Hub or the AGD may refuse to consider an application.

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 AGD 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.

The Hub and the AGD 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.

### 13.2 Community Grants Hub's responsibilities

The Community Grants Hub will:

- monitor grantee's compliance with the terms and conditions set out in the Letter of Agreement
- provide timely administration of the grant.

## 13.3 Grant payments and GST

Payments will be made as set out in the Letter of Agreement. Payments will be 'GST Exclusive'.

Before any payments are made, you must provide:

- an invoice for the amount of the payment
- evidence of meeting any specific conditions stipulated in the Letter of Agreement, if applicable.

The AGD reports details of all grant payments to the Australian Tax Office.

If you receive a grant, you should consider speaking to a tax advisor about the effect of receiving a grant before you enter into a grant agreement. You can also visit the [Australian Taxation Office website](#) for more information.

## 13.4 Evaluation

The AGD may undertake evaluations, 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.

# 14. Probity

The Australian Government will make sure that the program process is fair, according to the published guidelines, incorporates appropriate safeguards against fraud, unlawful activities and other inappropriate conduct and is consistent with the CGRGs.

**Note:** These guidelines may be changed from time-to-time by the AGD. When this happens the revised guidelines will be published on [GrantConnect](#) and the [Community Grants Hub](#) websites.

## 14.1 Complaints process

### Complaints about the Program

The AGD [Client Service Charter](#) applies to complaints about the Program. All complaints about the Program, including grant decisions, must be lodged in writing.

Any questions you have about grant decisions for the Program should be sent to [ecccf@ag.gov.au](mailto:ecccf@ag.gov.au).

### Complaints about the Process

Applicants can contact the complaints service with complaints about Community Grants Hub's service(s) or the application process.

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.

Phone: 1800 634 035  
Mail: Complaints  
GPO Box 9820  
Canberra ACT 2601

### **Complaints to the Ombudsman**

If you do not agree with the way the AGD or Community Grants Hub 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 AGD or Community Grants Hub.

The Commonwealth Ombudsman can be contacted on:

Phone (Toll free): 1300 362 072  
Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)  
Website: [Commonwealth Ombudsman](#)

## **14.2 Conflict of interest**

Any conflicts of interest could affect the performance of the grant. There may be a conflict of interest, or perceived conflict of interest, if the AGD or the Community Grants Hub staff, any member of a committee or advisor and/or you or any of your personnel:

- has a professional, commercial or personal relationship with a party who is able to influence the application selection process, such as an Australian Government officer
- has a relationship with an organisation, or in an organisation, which is likely to interfere with or restrict the applicants from carrying out the proposed activities fairly and independently or
- has a relationship with, or interest in, an organisation from which they will receive personal gain because the organisation receives funding under the Program.

You will be asked to declare, as part of your application, any perceived or existing conflicts of interests or that, to the best of your knowledge, there is no conflict of interest.

If you later identify that there is an actual, apparent, or potential conflict of interest or that one might arise in relation to a grant application, you must inform the AGD and the Community Grants Hub in writing immediately. Committee members and other officials including the decision maker must also declare any conflicts of interest.

The Assessment Centre Manager will be made aware of any conflicts of interest and will handle them as set out in Australian Government policies and procedures. Conflicts of interest for Australian Government staff will be handled as set out in the Australian Public Service Code of Conduct (Section 13(7)) of the *Public Service Act 1999*. We publish our conflict of interest policy on the [Community Grant Hub](#) website.

## 14.3 Privacy: confidentiality and protection of personal information

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
- to whom we give your personal information.

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.

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.

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.

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*

We will treat the information you give us as sensitive and therefore confidential if it meets all of the four conditions below:

1. you clearly identify the information as confidential and explain why we should treat it as confidential
2. the information is commercially sensitive
3. revealing the information would cause unreasonable harm to you or someone else
4. 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.

## 14.4 Freedom of information

All documents in the possession of the Australian Government, including those about the Program, are subject to the *Freedom of Information Act 1982 (FOI Act)*.

The purpose of the FOI Act is to give members of the public rights of access to information held by the Australian Government and its entities. Under the FOI Act, members of the public can seek access to documents held by the Australian Government. This right of access is limited only by the exceptions and exemptions necessary to protect essential public interests and private and business affairs of persons in respect of whom the information relates.

All Freedom of Information requests must be referred to the Freedom of Information Coordinator in writing.

By mail: Freedom of Information Coordinator  
The Department of Social Services  
Government and Executive Services Branch  
GPO Box 9820  
Canberra ACT 2601

By email: [foi@dss.gov.au](mailto:foi@dss.gov.au)

## 15. Glossary

| Term                 | Definition  |
|----------------------|---|
| assessment criteria  | The specified principles or standards against which applications will be judged. These criteria are also used to assess the merits of proposals and, in the case of a competitive granting activity, to determine applicant rankings.             |
| commencement date    | The expected start date for the grant activity.   |
| completion date      | The expected date that the grant activity must be completed and the grant spent by.   |
| Commonwealth entity  | A Department of State, or a Parliamentary Department, or a listed entity or a body corporate established by a law of the Commonwealth. See subsections 10(1) and (2) of the PGPA Act.   |
| date of effect       | This will depend on the particular grant. It can be the date in which a grant agreement is signed or a specified starting date. Where there is no grant agreement, entities must publish information on individual grants as soon as practicable. |
| decision maker       | The person who makes a decision to award a grant.   |
| eligibility criteria | The principles, standards or rules that a grant applicant must meet to qualify for consideration of a grant. Eligibility criteria may apply in addition to assessment criteria.   |

| <b>Term</b>        | <b>Definition</b>  |
|--------------------|--|
| grant              | <p>A grant is an arrangement for the provision of financial assistance by the Commonwealth or on behalf of the Commonwealth:</p> <ul style="list-style-type: none"> <li>a) under which relevant money or other CRF money, is to be paid to a grantee other than the Commonwealth</li> <li>b) which is intended to help address one or more of the Australian Government's policy outcomes while assisting the grantee achieve its objectives.</li> </ul> |
| grant activity     | Is the project /tasks /services that the Grantee is required to undertake with the grant money. It is described in the Grant Agreement.  |
| grant agreement    | Grant agreement means the contract template used by Australian Government entities to set out the mutual obligations relating to the provision of the grant. The Australian Government is standardising and streamlining grant agreements between the Commonwealth and grant recipients to allow grant recipients to engage more easily and efficiently with the Commonwealth.   |
| grant opportunity  | A notice published on GrantConnect advertising the availability of Commonwealth grants.  |
| grant program      | May be advertised within the 'Forecast Opportunity' (FO) section of GrantConnect to provide a consolidated view of associated grant opportunities and provide strategic context for specific grant opportunities   |
| grantee            | An individual/organisation that has been awarded a grant.  |
| selection criteria | Comprise eligibility criteria and assessment criteria.   |
| selection process  | The method used to select potential grantees. This process may involve comparative assessment of applications or the assessment of applications against the eligibility criteria and/or the assessment criteria.   |