

BALANCE

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Legal Aid's Proposed New Civil Guidelines

In March 1993 the Northern Territory Contingency Legal Aid Fund commenced operating. The fund (which was a joint creation of the Law Society and the Commission) aimed to provide disbursement cover for practitioners willing to conduct litigation on a fee deferred basis.

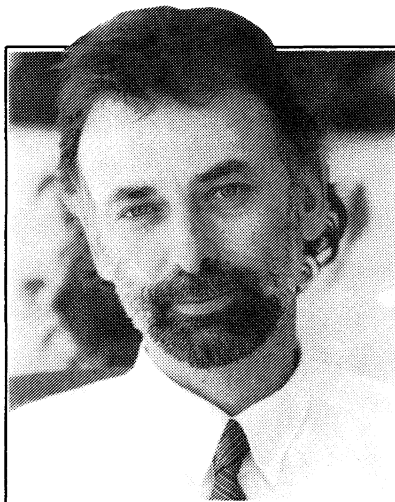
Although it had been hoped that the scheme would enable more middle income earners to obtain access to justice this doesn't really appear to have been the case. In the last financial year there were only 3 grants of assistance from the fund.

It has been suggested to me by a number of practitioners that because most people with personal injury claims qualify for some level of assistance from the Commission, and the CLAF guidelines require the solicitor to advise their client of this fact, they are invariably electing to pursue an application for legal aid.

It is also worth noting that most other legal aid commissions will grant aid for personal injuries cases. The theory being that if the case has real merit then the lawyers should be prepared to take it on spec. It is not that easy in the Territory because of the high cost of interstate medical evidence.

However, the Commission can only commit a certain proportion of its funds to civil cases and it is

currently granting legal aid in situations where practitioners would be prepared to run with the cases pro-



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vided their disbursements were covered. Practitioners have pointed out to us the unsatisfactory nature of the current arrangements especially as it means legal aid is tying up funds in areas where it does not need to be involved. It was suggested that if straightforward cases could be re-routed through the contingency fund then more grants of legal aid would be available for public interest cases

where liability was more marginal.

Consequently there is a proposal presently before the Commission to amend the civil guidelines to provide that:

A grant of legal aid will initially be limited to the investigation of the merits of the applicant's case. Where there are reasonable prospects of success, in the absence of special circumstances, further aid will only be granted where assistance is not available from the Northern Territory Contingency Fund.

Accordingly, solicitors whose clients have reasonable prospects of succeeding in the proposed litigation would be expected to first try to obtain funding through the contingency fund. In cases (such as medical negligence matters) where a significant amount of work needs to be done before the merits of the case can be assessed then a client could apply to Legal Aid for an initial grant to investigate. Once the matter had been properly investigated and the prospects of success assessed as good then it would be expected that the matter would proceed through the contingency fund.

The commission would be happy to receive any input from practitioners on this issue.