



Rules for the Litigation Assistance Fund for Disbursements Only Funding

Selection of Cases

1. The Trustee, the Advisory Board and the Fund Manager shall not be accountable for the selection or rejection of any case for a grant of assistance, and shall not be obliged to give reasons for the selection or rejection of any case.

Assessment of Applications

2. The Fund Manager shall consider each application for litigation assistance in accordance with the Fund's Rules and Guidelines and shall make a report to the Assessment Panel with a recommendation for the disposition of the application.
3. The Assessment Panel shall consider the Fund Manager's report before formulating its advice to the Trustee on the disposition of each application for assistance.
4. Documents delivered to members of an Assessment Panel for the purpose or consideration of applications, shall be returned to the Fund Manager upon conclusion of the Panel.
5. Where the Fund Manager and either the Chairperson or in his or her absence any two Members of the Advisory Board consider that an application requires urgent assessment, the Chairperson or those two members may authorise and grant assistance to an Applicant subject to such limitations and conditions as the Chairperson or those two Members may consider appropriate but shall report as soon as practicable to the Advisory Board of such action.
6. Assistance is limited to the public in South Australia.

Assistance can be granted to a person who is resident outside the State of South Australia, provided such person was resident in the State at the time the cause of action arose and there is a sufficient nexus with the State and it is appropriate in the circumstances that assistance be granted.

- 6A. The Litigation Assistance Fund will consider an application in respect of a matter where the proceedings are (or would be upon issue) conducted in an Australian jurisdiction other than South Australia, as long as:
 - a) The applicant is a current resident of South Australia; and
 - b) The applicant was also a resident of South Australia at the time the cause of action arose.

It is noted that a current resident of South Australia who left South Australia purely to receive medical treatment, and now brings a medical negligence claim in respect of that treatment, would likely meet the above residential requirements.

However, the Litigation Assistance Fund expressly reserves the right to reject such an application on the basis that the jurisdiction is insufficiently familiar/predictable to Litigation Assistance Fund personnel, or on the basis of the jurisdiction's approach to costs and disbursements.

The application must explain why the particular jurisdiction is preferred/necessary.

7. No assistance shall be granted for any period in excess of 28 days prior to the receipt of the application.
8. The Litigation Assistance Fund is not responsible for legal costs incurred by the applicant in making the application to the Fund nor for the cost of supplying material supporting such application.
9. A fee shall be payable upon the lodgement of an application for assistance from the Litigation Assistance Fund and an additional fee may be payable in the event that the application is sought to be assessed on an urgent basis. The fees shall be set by the Trustee and may be varied from time to time. In the event that the Applicant is unsuccessful in obtaining assistance, the fee will not generally be refunded.

Means Test

10. Upon application for a grant of assistance from the Litigation Assistance Fund, the Applicant shall disclose to the Fund Manager the applicant's full financial circumstances and, if assistance is granted, the Applicant shall promptly disclose any significant variations in his or her financial circumstances. The Applicant shall if required by the Fund Manager, authorise any other person to disclose to the Fund Manager those circumstances.
11. Assistance shall only be granted to an Applicant who is unable to reasonably meet the expected cost of proposed or actual litigation from the income and assets available to the Applicant.
12. If it appears to the Fund Manager that the Applicant may be eligible for legal aid from the Legal Services Commission (or any successor to that body) then the Fund Manager may recommend rejecting the application for aid from the Litigation Assistance Fund, or may postpone consideration of that application. The Fund Manager shall in any event inform the Applicant of that possible entitlement to legal aid before proceeding to determine whether or not the Applicant will be granted assistance under the Litigation Assistance Fund.
13. The Fund Manager may at any time require the Applicant and/or his or her solicitor (hereinafter called 'the solicitor') to provide to the Fund Manager any information or documents concerning the financial circumstances of the Applicant, details of any negotiations arising out of the assisted litigation, and generally the circumstances of the litigation.

It shall be a condition of the grant of assistance that the Applicant and the Solicitor shall comply with any such requirement of the Fund Manager and the Applicant shall authorise and direct the Solicitor to provide to the Fund Manager the same information or documents if required by the Fund Manager.

Contribution

14. The Assessment Panel may require the Applicant to contribute to the cost of the litigation having regard to the Applicant's financial circumstances. Further, the Assessment Panel may subsequently vary the terms of the contribution requirement, on the grounds of the Applicant's changed financial circumstances, the merits of the case, the likely cost of the case, the Applicant's failure to comply with the Rules, or any other reasonable ground.
15. Any contribution fixed in accordance with these Rules shall be paid at such times and in such instalments as the Trustee shall direct.
16. The contribution or part thereof shall be paid to the Trustee and shall not be refundable unless otherwise directed by the Trustee.

Variation of Assistance

17. The Trustee may at any time after the approval of an application for assistance vary, extend, suspend or cancel such assistance on any of the following grounds:

- The information provided by the Assisted Person or the Solicitor to the Fund Manager is materially inaccurate.
- The Assisted Person's case appears to lack merit.
- The ultimate return to the Fund (taking into account the *anticipated disbursements*) is likely to be significantly different from any earlier anticipated return.
- The Trustee considers that the solvency of the Fund is threatened by the continuing grant or extension of the assistance, and in such a case the Trustee may vary, suspend or cancel assistance in any one or more cases without being liable to give reasons for the choice of those cases.
- The Assisted Person has unreasonably refused to follow advice from the solicitor.
- Any significant change in the Assisted Person's prospects of success in the litigation, the means of the Assisted Person, the importance of the case or the likely financial return to the Fund.
- A failure by the Assisted Person or Solicitor to report adequately to the Fund Manager upon request.
- A failure by the Assisted Person or Solicitor to comply with any of the Rules or any request or direction by the Fund Manager.
- Legal practitioners have not entered into or have failed to provide to the Fund a copy of the contingency fee agreement.
- Legal practitioners have failed to provide to the Fund written confirmation that the barrister engaged by the solicitor has agreed to act for the Assisted Person on a contingency basis.
- Any other good cause.

Subject to the above, the Fund Manager shall supply upon request by the Assisted Person the reasons for such variation, extension, suspension or cancellation.

Reporting to the Fund Manager

18. The Fund Manager may require a report from the Assisted Person or Solicitor at any time regarding any matter connected with the assisted litigation and the financial circumstances of the Assisted Person and such report shall be provided to the Fund Manager upon request within a reasonable time.

19. The Solicitor shall inform the Fund Manager of all court and informal conference appointments promptly upon the dates being set and of any matters that come to his or her attention that relate to the matters set out in Rule 17 hereof.

Accounting

20. The Litigation Assistance Fund shall reimburse the Assisted Person's disbursements on an agreed scale together with any Goods and Services Tax ("GST") payable in respect of such disbursements.

The Fund does not pay solicitor's costs or barrister's fees or reimburse general office expenses such as photocopying, telephone or facsimile charges. The Fund does not pay the cost of the solicitor reporting to the Fund.

21. The Trustee shall grant assistance to the Assisted Person for the payment of the latter's disbursements on an agreed scale to extend from the date of receipt of the application to a set stage in the proceedings as follows:
- a) investigation of claim to drafting of Summons with Statement of Claim
 - b) filing of summons to pre trial conference;
 - c) to include trial;
 - d) to include post trial procedures.

At the conclusion of each of the above stage of litigation the assisted person may apply to extend the assistance to cover the next stage of the proceedings.

22. The approval of the Fund Manager must be obtained before the Assisted Person or Solicitor incurs any disbursement which exceeds \$1000 or such other sum as shall be prescribed by the Trustee from time to time.
23. Upon the grant of assistance, the Assisted Person shall irrevocably authorise and direct the solicitor, and any subsequent solicitor in the same litigation, to pay to the trustee the Fund Fee before releasing any other money to the Assisted Person.
24. The amount to be levied by the Trustee pursuant to Clause 6(3)(d) of the Trust Deed by reference to the amount or value recovered by the Assisted Person ("the Fund Fee") shall be the repayment of disbursements paid by the Fund plus an uplift of between 20% and 100% on the total amount of disbursements approved by the Fund and incurred by the assisted person; the amount of such uplift is to be determined by each Assessment Panel. In the event that the successful litigation is not concluded with an award of monetary damages, then the value of the property so awarded to the Assisted Person shall be considered as if it were a monetary sum. The value of such property shall be the value as determined by the court or tribunal hearing the matter if the action proceeds to trial, the value as agreed between the litigants if the matter does not proceed to trial, or if otherwise undetermined, the value as reasonably determined by the Trustee.
25. The Fund Fee shall be a first charge, enforceable by the Trustee, on any amount or value of property recovered by the Assisted Person as a result of the assisted litigation, and the Fund Fee shall be paid to the Trustee as soon as practicable.
26. It is a condition of the grant of assistance that the solicitor enter into a conditional costs agreement with the assisted person which establishes that in the event of the action being unsuccessful the solicitor will not charge the assisted person. The conditional costs agreement must comply with the Legal Practitioners Act, including, without limitation, section 26. Where section 26(4)(b) of the Legal Practitioners Act applies, any uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable. The conditional costs agreement is to be sighted by the Fund Manager.
27. Disbursements and Goods and Sales Tax ("GST") recovered on a party/party basis by the Assisted Person or the Solicitor with respect to work done after a grant of assistance shall be the Trustee's and shall be paid to the Trustee as soon as practicable.
28. Save and except as may be specifically agreed by the Advisory Board in the event that the Assisted Person's claim is not successful, then the party/party costs awarded against the Assisted Person shall be borne by the Assisted Person and the Trustee shall not be liable for such party/party costs in any circumstances.
29. When accepting assistance from The Litigation Assistance Fund, the Assisted Person shall assign to the Trustee a joint right together with the Assisted Person pursuant to the Legal Practitioners Act to request itemised accounts for disbursements and have such

disbursements taxed but shall be entitled to see a copy of any account forwarded by the Solicitor to the Trustee.

Termination of Assistance

30. An Assisted Person may terminate the assistance at any time but, subject to any waiver by the Trustee, the Fund Fee shall continue to be recoverable pursuant to these Rules and the Trustee in its discretion may recover in a court of competent jurisdiction all or part of the amount paid or payable by the Trustee to or on behalf of the Assisted Person before the termination.

Miscellaneous

31. Save as provided in the following Rule, there shall be no appeal or review against any decision of the Trustee, the Advisory Board, the Assessment Panel or the Manager.
32. In the event that the Manager considers that any determination of the Assessment Panel is inconsistent with the trust, rules, policies or directions of the Advisory Board, then the Fund Manager shall refer the application and the recommendations of the Assessment Panel to the Advisory Board for final determination.
33. These Rules may be amended at any time by the Trustee and unless otherwise resolved by the Trustee shall take effect from the date of amendment in relation to all cases then current and future.