



LEGAL ASSISTANCE SCHEME

1 – PREAMBLE

- 1) This Legal Assistance Scheme (the Scheme) is established in accordance with Rule 105 of the registered rules of the Australian Federal Police Association – a branch of the Police Federation of Australia (the Association).
 - (i) Rule 57(1)(k) of the AFPA states Legal Assistance shall mean the provision of legal advice and representation of a member by a legally qualified employee of the Association, at no cost to that member apart from their fees; and/or
 - (ii) the provision of funding for or toward the legal costs (including expenses and disbursements) of a member by one or more legal practitioners engaged to provide legal services to that member.
- 2) The Scheme is designed to:
 - (i) assist members who may encounter employment related problems requiring legal expenditure; and
 - (ii) to define the circumstances in which in-house legal and industrial services will be provided to a member.
- 3) The Scheme is not an insurance policy. It is intended to offer members financial assistance for legal fees or associated legal expenses or costs that arise from their employment relationship with the Australian Federal Police.
- 4) The Association is conscious of its obligation to both individual members and the police profession and will always apply members' funds in a manner which is consistent with its moral and fiduciary obligations to the membership.
- 5) The Association will not support members who are charged with criminal offences or who are alleged to have engaged in serious misconduct unless exceptional circumstances exist.
- 6) The overall responsibility for administration of the Scheme rests with the Executive of the Association.
- 7) The day to day management of the Scheme is the responsibility of the Association General Manager in consultation with the Manager - Legal and Industrial.
- 8) Authority for the granting of legal assistance is delegated to the Executive Legal

Assistance Committee, subject to the principles and requirements set out in this policy.

2 – ELIGIBILITY OF APPLICANT

- 1) To be eligible for legal representation financed by the Scheme or legal services provided by Association staff an applicant shall be:
 - a) A financial ordinary member of the Association.
 - b) A non-financial member who is using a period of approved leave without pay from the AFP and was at the time that leave commenced, a financial member of the AFPA.
 - c) A former member who, at the time of the act or omission that is alleged, was a financial member of the Association.
 - d) The spouse, partner or dependent of a deceased member in relation to a claim or an issue concerning the deceased member, who, at the time of the death of the deceased member was a financial ordinary member of the Association, in respect of an issue that arose from the deceased member's employment relationship with the AFP.
 - e) The estate of a former member in circumstances where a claim for, or against, the estate arises out of the death of the member while in the course of his/her employment.
- 2) A member of the Executive, an elected delegate or an employee or servant of the Association, who becomes a party to any legal proceedings as a result of pursuing the aims and objectives of the Association.

3 – TYPES OF MATTERS COVERED

- 1) Legal Assistance may be granted to a member under this scheme in relation to matters directly arising from the member's employment, (except as outlined in Clause 13).
- 2) Legal Assistance granted under this scheme shall be for the following purposes or to provide legal services:
 - a) in a criminal matter, (if exceptional circumstances exist and approved in accordance with Clause 6 and 7 of this Scheme);
 - b) in seeking legal advice concerning the merits of any proposed or potential legal or administrative proceedings relating to a matter arising under *Australian Federal Police Act 1979*;
 - c) to seek an advice or an opinion, which becomes and will remain the property of the Association, providing that the matter:
 - (i) is of significant importance to the Association;
 - (ii) is of general interest to the broader membership; and

- (iii) has the potential to significantly affect the way the Australian Federal Police performs or conducts business.
- d) for a coronial inquest or inquiry;
- e) to respond to a notice issued under the *Australian Federal Police Act 1979* regarding employment issues;
- f) to pursue a review of or to appeal to a relevant tribunal, commission or body against a decision of the Commissioner to remove, demote, terminate, transfer or take any other employment action under the *Australian Federal Police Act 1979* or other legislation;
- g) to pursue a matter before any body or board that has jurisdiction over discrimination or harassment laws;
- h) to pursue a matter before the Commonwealth's Administrative Appeals Tribunal or equivalent State or Territory body;
- i) for representation during any enquiry by a Federal, State or Territory Ombudsman, Tribunal or Commission;
- j) for any matter where the Executive believes assistance should be provided in the interests of the membership and in accordance with the Objects of the Association's Rules; and
- k) for any matter arising in a jurisdiction outside Australia which arose during a member's deployment to that place.

4 – CIRCUMSTANCES FOR GRANTING LEGAL ASSISTANCE

1) General:

- a) Legal Assistance shall only be provided where:
 - (i) The act or the omission that gives rise to the need for legal assistance was done, made or undertaken by the applicant lawfully or in good faith in the course of or in the discharge of the applicant's duties;
 - (ii) To make it clear a matter referred to above includes any act or omission so defined where the member is not undertaking a rostered shift of duty but is nevertheless acting in his or her official capacity as an employee of the Australian Federal Police;
 - (iii) Undertaking activities on behalf of the Association;
 - (iv) No aid or assistance was approved or granted to the Applicant by the Australian Federal Police or the Crown;
 - (v) Assistance is provided by the AFP and the Legal Assistance Committee considers that such aid or assistance is inadequate in the circumstances; and

- (vi) The applicant agrees to be bound by the Clauses of this Scheme.
- b) An application may be rejected if it is determined that:
 - (i) Assistance is not in the general interest of the membership;
 - (ii) The potential cost of the assistance is disproportionate to the member's desired outcome; or
 - (iii) The Association seeks independent legal advice, including the advice of a legally qualified Association employee, about the merits of the matter which advises that the matter is without reasonable prospects of success.
- 2) **General Limitations on Assistance:**
 - a) Generally, the Association will not fund:
 - (i) Civil proceedings; or
 - (ii) Pleas of guilty.
- 3) **Workers Compensation Matters:** (not including appeals from the Administrative Appeals Tribunal)
 - a) The Association shall, where possible and at the request of the member, assist a member through the Association's employed legal officers in relation to a worker's compensation claim. The Association's employed legal officers will provide advice and guidance on:
 - (i) Lodging a worker's compensation claim;
 - (ii) Lodging a reconsideration;
 - (iii) The return to work process; and
 - (iv) Rehabilitation.
 - b) Where a member requests financial assistance in matters relating to the member's worker's compensation claim, such assistance may be given where the member demonstrates actual financial hardship and is limited to funding expenses related to obtaining medical and other specialist reports sought by the member's legal representative in relation to the claim for worker's compensation through the decision-making processes and before the Administrative Appeals Tribunal.
- 4) **Other Assistance:**

Where a member is charged with a criminal offence or is the respondent in legal proceedings not otherwise defined in Clause 3 above, and the member can display to the satisfaction of the Legal Assistance Committee or Executive that, because the proceedings to which the member is a respondent have arisen either wholly or in part because of the member's employment under the Australian Federal Police Act 1979 and the member can display financial hardship, the Executive may approve an interest free loan of up to \$10 000 to cover legal costs incurred in defence of those proceedings. This is provided after the member completes an agreement in writing to repay the loan on terms agreed to by both the Association and the member concerned in accordance with

Rule 99 of the Registered Rules of the Association.

5 – APPOINTMENT OF LEGAL ASSISTANCE COMMITTEE

- 1) The Legal Assistance Committee shall consist of the following:
 - a) The Vice President (Chairperson);
 - b) Two members of the Executive appointed by the Executive; and
 - c) The Secretary/Treasurer shall be a reserve member of the Committee.
- 2) The Legal Assistance Committee will be appointed at the first Executive meeting following the declaration of the Executive ballot conducted at the Association's Biennial National Council meeting.
- 3) The Legal Assistance Committee will hold office until the declaration of the subsequent ballot conducted at the Association's Biennial National Council meeting and the appointment of the new legal committee.
- 4) The Executive may fill any casual vacancy on the committee by the direct appointment of another Executive member.
- 5) If the Vice President is unavailable at any time the Secretary/Treasurer shall chair the committee.

6 – APPLICATION PROCESS

- 1) Applications for Legal Assistance must be in writing to the Association General Manager and include relevant supporting documentation such as but not limited to:
 - a) any documents, including letters, notices or reports that relate to the matter for which legal assistance is sought; and
 - b) briefs of evidence for criminal matters or any other relevant information.
- 2) An application under this Clause can be made electronically.
- 3) On receipt of an application the General Manager will refer the application to the AFPA's Manager - Legal and Industrial or, in the event of the unavailability of that employee due to a conflict or other reason, another suitably legally qualified employee, or an external legal practitioner.
- 4) The General Manager may approve expenditure of up to \$5000 in the event a matter is referred to an external legal practitioner for preparing information required under Clause 6 of the Scheme.
- 5) If an AFPA employee preparing a report for the Legal Assistance Committee believes it is necessary to engage an external legal practitioner to assist in the completion of such a report the General Manager may approve up to \$5000 for that purpose.
- 6) A report shall be prepared for the consideration of the committee by the nominated person and may include the following matters where relevant:

- a) Eligibility of the applicant in accordance with Clause 2;
- b) If the circumstances of the application meet the requirements of Clause 3;
- c) The nature of the claim;
- d) The complexity of the law and the facts involved;
- e) The value of the claim;
- f) The overall merits of the claim;
- g) The estimated cost of providing advice and/or assistance;
- h) The likely costs which may be awarded if a matter is unsuccessful;
- i) Any industrial relations, education or Association significance of the claim;
- j) Any relevant aspects of the Association's internal policies;
- k) The personal consequences of an adverse result on the applicant Member, e.g. financial hardship or loss of employment;
- l) Whether an application for representation by the Crown has been made by the member in the first instance; and
- m) Whether assistance is in the general interest of the membership.

7 – RESPONSIBILITIES OF THE LEGAL ASSISTANCE COMMITTEE

- 1) The appointed Legal Assistance Committee shall, on receiving the report prepared in accordance with Clause 6.6, determine whether to provide funding for the legal assistance sought and determine such conditions and restrictions that attach to that legal assistance as provided for at Clause 7.4. Such conditions and restrictions may include member contributions to costs, maximum amount, and the engagement of Association preferred legal counsel.
- 2) The Legal Assistance Committee may, in considering its decision, obtain any other information which it believes is relevant from any other source and may from time to time defer its decision until it has properly considered such information. Any costs incurred through such enquiry will be borne by the Association.
- 3) The Legal Assistance Committee is not bound by precedent.
- 4) The Legal Assistance Committee shall, through the Association General Manager, advise the applicant of its decision in writing to:
 - a) Grant legal assistance, including any conditions the Committee decides are appropriate; or
 - b) Reject the application.
- 5) The Legal Assistance Committee may grant assistance to an ordinary financial member who, at the time of the act or omission that is alleged, was a non-member of the Association dependent on the current and previous personal circumstances of the

member and the likely costs of any assistance provided. The Legal Assistance Committee may require the advance payment of a service fee. The minimum fee, if imposed, shall be the equivalent of three months subscription fees for that member. A higher fee may be imposed by the Legal Assistance Committee

- 6) The Association is liable only for funding that is expressly approved by the Legal Assistance Committee.
- 7) An applicant or the applicant's legal representative is to immediately notify the Association General Manager of any changes in circumstance which may affect the legal liability of the Association.
- 8) Where approval for funding is granted, an agreement will be signed by the General Manager and the applicant specifying the terms and conditions stipulated under Clause 7.4 of the Scheme.
- 9) The Legal Assistance Committee must approve any alterations to the purpose of the original funding and the original contract is to be amended and signed by the respective parties.
- 10) The Legal Assistance Committee shall report on all decisions to each Executive meeting.
- 11) A contract entered between the General Manager and the applicant shall bind the applicant in terms of costs in any court proceedings as set out under Clause 10 of the Scheme.

8 – REQUEST BY APPLICANT FOR REVIEW OF DECISION

- 1) The applicant may seek a review of the decision of the Committee by application to a Review Committee, which is made up of the balance of the Executive who were not part of the Legal Assistance Committee who made the original decision under review. Such an application must be made to the General Manager within 14 days of receiving notice of the decision in writing.
- 2) An application under Clause 8.1 may be submitted electronically to the Association General Manager.
- 3) The Review Committee shall, upon receiving an application for review pursuant to Clause 8.1, conduct a review of the decision of the Legal Assistance Committee, and provide the applicant with an opportunity to submit written submissions supporting the application.
- 4) The Committee may also, at its absolute discretion, allow the applicant to be heard 'in private and question the applicant on the matter before making its decision.
- 5) The Review Committee shall then, through the Association General Manager, in writing advise the applicant of its decision to:
 - a) Provide assistance to the member in the terms sought in the application; or

- b) Reject the application for assistance on the terms sought in the application but grant assistance on alternative terms that the Review Committee sees fit; or
 - c) Reject the application for assistance.
- 6) If an applicant receives new material or information relevant to a rejected application, the applicant may make a fresh application under Clause 6.

9 – APPEAL BY APPLICANT UPON RECEIPT OF NEW MATERIAL OR INFORMATION

- 1) The decision of the Review Committee in respect of legal assistance is final.

10 – COSTS, AWARD OF DAMAGES & DISBURSEMENTS

- 1) If the grant of legal assistance includes a condition requiring the periodic payment of disbursements, and such disbursements are recoverable on completion of the applicant's action, such disbursements, when paid, are to be repaid to the Association.
- 2) An applicant who receives an award for costs, damages or any other reason following the grant of legal assistance, shall be liable to refund to the Association any monies paid on the applicant's behalf, arising from that matter, to the limit of the award received.
- 3) While a member may instruct a lawyer, the Association is to be advised by the applicant of any adjournment sought by a party and the reasons for such adjournment. Failure by the applicant to do this may result in funding being withdrawn.

11 – SETTLEMENT OF CLAIMS

In any action, the Executive, upon receiving legal advice, may direct an applicant to settle their claim on terms advised by their solicitor. If an applicant rejects such a direction and elects to proceed with their action, the Legal Assistance Committee may withdraw any further funding. The applicant shall then be liable to the Association for all assistance to the date of the Executive's direction and such assistance shall be recoverable as a debt from the applicant.

12 – PRESIDENT'S AUTHORITY TO GRANT ASSISTANCE

- 1) Notwithstanding anything to the contrary contained elsewhere within the Legal
- 2) Assistance Scheme, the President, or in the absence of the President, the Vice President, may upon a verbal or written application by any eligible person for legal assistance to be financed by the Association under this Legal Assistance Scheme, grant and arrange for such legal assistance up to an amount not exceeding \$2000 without having to seek approval from the Legal Assistance Committee.
- 3) Without limiting the general application of Clause 12.1, assistance under that Clause shall be granted to a member seeking assistance with a response to an employment

related matter or preliminary legal advice relating to a criminal matter to which the Legal Assistance Scheme applies, where the relevant authorised office bearer believes such assistance is necessary or desirable.

- 4) Subject to Clause 12.4, any further funding of legal assistance over and above that amount must be approved by the Legal Assistance Committee in accordance with the provisions set out above.
- 5) Where legal assistance over the amount provided for in Clause 12.1 is required in an emergency and it is not possible for the eligible person to make a formal application in time, the President or Vice President may authorise further legal assistance until the Legal Assistance Committee has properly considered the matter. The eligible person shall give an undertaking to provide a written request for legal assistance as soon as practicable in accordance with this Scheme.
- 6) The Association shall be able to recover legal assistance granted under this Clause from the applicant where:
 - a) The eligible person has not made a written application for assistance as required at Clause 12.4 and 12.7
 - b) The application for legal assistance is refused by the Legal Assistance Committee after due consideration of the matter in accordance with the formal application provisions set out above; or
 - c) The conditions set out at Clause 12.6 are not adhered to by the applicant.
- 7) Legal assistance under this Clause shall only be granted on condition that the legal assistance sought is obtained through a legal practitioner nominated by the President (or the Vice President in the absence of the President). Approval for further emergency assistance is limited to what is necessary in all the circumstances until the applicant has been afforded a reasonable opportunity to make an application for legal assistance in the manner ordinarily required under the Legal Assistance Scheme.
- 8) A verbal application made under this Clause will be reduced to writing as soon as practicable.
- 9) An application under this Clause may be made electronically.
- 10) The President or the Vice President shall report to the Executive all assistance approved under this Clause and any applications which have been denied.

13 – INITIAL ADVICE – CRIMINAL ALLEGATION

- 1) Where a financial member is the subject of a criminal allegation the President, an employee acting at the direction of the President or in the absence of the President, the Vice President or Secretary/Treasurer, may authorise initial legal representation for that

member. Such advice is to be restricted to initial advice, attendance at any investigatory procedure, a bail application and, if required, a first mention in the court of summary jurisdiction.

- 2) Further applications and approvals will then be required in accordance with the Legal Assistance Scheme.