

Solicitors' Guarantee Fund Grants Policy

April 2020

Contents

1 .	Introduction.....	3
2 .	Grants	3
3 .	Invitations for Applications	4
4 .	Applications for Grants.....	4
5 .	Assessment Panel	5
6 .	Assessment of Applications	6
7 .	Deeds and Terms & Conditions	7
8 .	Applications for grants from the SGF outside a funding round.....	8

1 . Introduction

The Solicitors' Guarantee Fund (Guarantee Fund) was created and maintained under the *Legal Practitioners Act 1959* (repealed) (the 1959 Act). The Guarantee Fund was wound up in 1962 by amendments to the 1959 Act. It was then re-established in 1970 and has continued since that time under subsequent versions of the legislation, with varying provisions and criteria in relation to the granting of funds.

Section 358 of the *Legal Profession Act 2007* (the Act) provides for the continuation of the Guarantee Fund.

The Guarantee Fund is comprised mainly of interest generated by the monies standing to the credit of legal practitioner's trust funds – that is, client funds being held, usually temporarily, by law firms. The Guarantee Fund does not hold government funds.

The Guarantee Fund is administered and managed by the Solicitors' Trust (the Trust), which is established under Part 7.6 of the Act. The Trust is an independent statutory body comprising of two legal practitioners and an accountant.

Under section 358 of the Act, the Guarantee Fund is to be applied by the Trust for the purposes of compensating clients of legal practitioners who have defaulted on their fiduciary duties, to cover the costs of the operation of the Legal Profession Board and Disciplinary Tribunal and for expenses incurred in the administration of the Guarantee Fund. The Guarantee Fund is also to be applied to other purposes approved by the Minister for Justice (the Minister) under section 361.

Section 361 of the Act allows the Minister to approve grants of money from the Guarantee Fund where the Guarantee Fund exceeds the prescribed minimum threshold, which is \$11 million (*Legal Profession Regulations 2018*, regulation 69) taking into account ascertained and contingent liabilities.

2 . Grants

Under section 361, the Trust must advise the Minister that the Guarantee Fund has exceeded the prescribed amount (\$11 million). On receipt of that advice, the Minister may invite a relevant person including, but not limited to, the Legal Aid Commission of Tasmania,

or such other legal assistance scheme, and the Law Foundation of Tasmania to make application for a grant of money from the Guarantee Fund.

Under the Act, relevant person includes, but is not limited to –

- (a) a Government Agency; and
- (b) a court, tribunal or similar person or body acting judicially; and
- (c) a person or body, however constituted, that provides either or both of the following:
 - (i) legal services or other law related assistance or services;
 - (ii) advice, or opinions, recommendations or reviews, on legal or law related matters affecting the State; and
- (d) such other persons or bodies as may be prescribed.

3 . Invitations for Applications

The Minister may decide to invite applications by either or both of the following methods:

- open invitation by public advertising; and/or
- targeted invitation by writing directly to potential applicants.

It is up to the Minister to determine which method is to be used to invite applications and, where targeted invitations are used, to whom invitations are to be sent.

4 . Applications for Grants

All applications must be in writing, must set out why the applicant is seeking funding, and demonstrate how the funding activity will achieve one or more of the outcomes set out below.

The application must include a clear, detailed, accurate and complete budget for the activity, and must also include the timeframe for the activity and evidence to demonstrate that the applicant has the ability to complete it.

In general, priority will be given to applications that will achieve any of the following outcomes:

- An increase in the number of people receiving free or low cost legal services;
- An improvement in the quality of legal services provided to the public;

- An improvement in the range of legal services provided to the public;
- An improvement in the operation of the justice system; and
- An increase in community awareness of the law, legal services or the justice system, including the provision of education and training.

Additional priorities may be identified for individual grant rounds at the Minister's discretion.

Applications should also clearly identify the applicant and provide contact details for the applicant including postal address, e-mail address, telephone number and contact person.

Applicants must identify any potential or actual conflict of interest when applying for the grant. Where a conflict of interest is identified, the applicant must demonstrate a capacity to implement procedural mechanisms and/or governance arrangements to address this concern.

5 . Assessment Panel

Prior to inviting applications for grants, the Minister must convene an Assessment Panel to consider applications. The Assessment Panel will consist of the following members:

- (a) one person nominated by the Secretary of the Department of Justice (**Chair**);
- (b) the Chair of the Solicitors' Trust;
- (c) one person nominated by the Law Society of Tasmania;
- (d) one person nominated by the Tasmanian Bar; and
- (e) one person nominated by Community Legal Centres Tasmania.

Conflict of interests

It is the responsibility of the Assessment Panel to avoid ethical, legal, financial or other conflicts of interest where possible, and to ensure that any such conflicts (where they do arise) do not conflict with the obligations of the Panel.

Panel members will manage conflicts of interest by:

- avoiding conflicts of interest where possible;

- identifying and disclosing any conflicts of interest (either perceived or actual) to other Panel members, and in the report provided to the Minister when recommending the approval, or otherwise, of applications from the Guarantee Fund;
- carefully managing any conflicts of interest, including restricting the involvement of the Panel member from consideration of an application/s; and
- following this policy and responding to any breaches.

Breaches should be reported to the Secretary of the Department of Justice in writing for appropriate action.

6 . Assessment of Applications

Applications will be handled and assessed in three stages.

Stage 1 - Receipt of Applications (Department of Justice)

All applications are received and reviewed for completeness by the Department of Justice. If the application is incomplete or unclear, applicants will be contacted by the Department to obtain additional information.

Notices acknowledging receipt of applications will be sent to all applicants.

Stage 2 - Assessment Panel

The Assessment Panel will review all applications having regard to a range of factors including, but not limited to:

- Whether the applicant is a “relevant person” within the meaning of the Act.
- Whether the applicant has provided sufficient information about the purpose of the program/project, the quality of its management and the integrity of the applicant.
- Whether the program/project will provide a clear outcome to the community rather than provide services to other service providers.
- To what extent the funding will be applied directly to the proposed program/project rather than the administration of the applicant.
- Whether the application clearly identifies the intended outcomes along with a proof of the need for the program/project.

- Whether the person has received a grant in an out of funding round application since the last funding round, and if so, the amount of the grant received. The fact that a person has received a grant in an out of funding round application should not be considered as a deciding factor as to whether or not funding should be granted.
- In the case of Government Agencies and instrumentalities, whether the application seeks a grant for purposes that are more properly a matter for core funding.

The Assessment Panel may request the Department to clarify applications or obtain further information from applicants.

The Assessment Panel must provide the Minister with a summary of both the applications recommended for funding and those recommended for rejection by the Assessment Panel.

The Assessment Panel will not provide the reasons to applicants for its recommendations to the Minister.

Stage 3 - Minister

After the Minister receives the recommendations of the Assessment Panel, the Minister may formally accept or reject the recommendations of the Assessment Panel.

If the Minister does not accept a recommendation of the Assessment Panel, the Minister may either overturn the recommendation, or seek further information or clarity about the Assessment Panel's decision.

The Minister will make the final determination with respect to that application

After the Minister determines which recommendations have been accepted, and if any were rejected, the Department of Justice will notify all applicants accordingly.

7. Deeds and Terms & Conditions

All grants are contingent on the successful applicant entering into a grant deed arrangement or written terms and conditions (in the case of applicants that are not legal entities) with the Minister and the Trust.

The deed or terms and conditions will specify, among other things:

- The approved purpose of the grant;

- The amount of the grant;
- Conditions precedent to the payment of the grant;
- The date for commencement of the approved purpose;
- The date for completion of the approved purpose; and
- Reporting requirements.

The Deeds or terms and conditions will be in accordance with standard Government policy and with the approval of the Office of the Crown Solicitor of Tasmania.

8 . Applications for grants from the SGF outside a funding round

From time to time, applications are made to the Minister for grants from the Fund outside a funding round. On these occasions, the Minister will:

- write to the Chair of the Solicitors' Trust enquiring as to the Fund's available surplus; and
- refer the application to the Assessment Panel for review and assessment in accordance with Clause 6 of this Policy.

When assessing the application, the Assessment Panel may take into account the amount of surplus available in the Fund.

Policy Title	Solicitors' Guarantee Fund Grants Policy
Branch	Office of the Secretary
Date of first Issue	05/12/2019
Version Number	3.0
Date of this version	8/04/2020
Next Review Date	30/09/2020