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COMPLAINTS, REVIEWS AND APPEALS POLICY

Procedures for Complaints and Requests for Reviews and Appeals of Decisions not to Grant Assistance or to Grant Assistance on Particular Terms:

Policy

NAAJA is committed to providing a quality service to the Aboriginal community.

This commitment will be enhanced by a clear and accessible complaints, reviews and appeals policy.

Eligibility Criteria

Consistent with the Attorney Generals Contract with NAAJA for the delivery of Indigenous Legal Aid Services, NAAJA services are made available only to Aboriginal persons, groups or individuals.

NAAJA services may be provided to a non-Aboriginal person or organisation only where this can be shown to meet requirements set out in the Attorney Generals Policy Directions for the delivery of Legal Aid services to Aboriginals which provides that NAAJA services be of direct and substantial benefit to one or more Aboriginal persons, groups or bodies.

Where NAAJA judges that these conditions are satisfied and decides to provide assistance to a non-Aboriginal person or organisation, the reasons supporting this decision are to be fully documented.

Means Test and Client contribution

The strong growth in demand for NAAJA services requires that the limited resources available for this purpose should be directed to those applicants in greatest need of assistance.

NAAJA must ensure that applicants satisfy a means test.

Depending on the results of the means test, applicants will be classified into one of three categories:

- (a) applicants eligible to receive free legal aid assistance;

- (b) applicants eligible to receive legal aid assistance, subject to payment of a contribution towards the cost of that assistance; or
- (c) applicants not eligible to receive legal aid assistance.

The means test is administered in two parts:

- Part A: requires the completion of a small number of questions relating to the applicant's personal circumstances and income level.
- Part B: is required where applicants do not satisfy the criteria in Part A. It requires more detail about the applicant's income, assets, employment status and number of dependents.

Any applicant who only needs assistance with information, initial legal advice, minor assistance or a referral will automatically qualify for free legal assistance.

Any applicant who only needs assistance with a duty matter will also automatically qualify for free legal assistance.

NAAJA must ensure that all applicants for legal casework assistance satisfy one or more of the following requirements:

- (a) under 18 years of age;
- (b) main source of income comes from Community Development Employment Projects (CDEP) participant wages or Centrelink (or equivalent) benefits; or
- (c) gross personal income is under \$46,000 per annum.

Any applicant who satisfies one or more of the three requirements automatically qualifies for free legal assistance.

NAAJA must apply Part B of the means test to any applicant seeking casework assistance who does not satisfy the any of the three requirements.

NAAJA must then obtain more information to enable a means test of income and assets to be conducted.

NAAJA must collect an initial contribution from an applicant where either or both the applicant's gross weekly household income and/or the applicant's net assets exceed the contribution-free thresholds in the Attorney Generals Policy Directions for the delivery of legal aid services to Indigenous Australians.

Procedure for Receipt of Complaints and Requests for Review

When NAAJA advises a client that NAAJA has made a decision not to grant aid or to grant aid on particular terms, they will be notified in writing they can within 60 days of the date of written notification of the decision, request a review of the decision.

When NAAJA receives a letter which is clearly a request for a review or a complaint, the letter is referred to the CEO.

A copy is placed in the master complaints file or master review file.

A letter will be sent to the client enclosing a copy of the NAAJA complaints, review and appeals pamphlet.

Complaints

All complaints are to be referred to the CEO for consideration.

Complaints can be received either verbally or in writing. Verbal complaints are to be discouraged. If the complainant is unable or unwilling to make a written complaint, two staff members will be present when the complaint is taken and a file note will be made and signed by both staff members and when appropriate, the complainant.

All complaints will be recorded in a complaints register. The complaints register will contain a copy of the original complaints, details of who is handling the complaint, a record of the outcome of the investigation into the complaint, and any follow up activity from the complaint.

The complainant will be advised, in writing, of how their complaint will be handled, who is handling it and when they will be told of the outcome of their complainant. The notice will be sent to the complaint within 7 Business Days of their complaint being made.

The complaint will be investigated by a NAAJA staff member who is not located at the same section as the person who the complaint is about. The investigating NAAJA staff member will report their findings to the Principal Legal Officer and the CEO of NAAJA.

The CEO is responsible for complying with the complaints policy.

The CEO will provide an up to date copy of the complaints register to the Board of NAAJA for consideration at Board meetings.

All complaints will be resolved within 14 Business Days of the complaint being made.

NAAJA will notify the Attorney Generals Department of any complaints which are not resolved during this period and provide an explanation as to why it has not been resolved within 40 days

When the outcome of the investigation into the complaint has been finalised, the complainant will be informed in writing of that outcome

If the complainant wishes to pursue the complaint further the complainant will be offered a copy of the review procedure

A copy of the complaints, reviews and appeals pamphlet will be displayed in at least A3 size dimensions in the waiting room or other suitable area at each of the NAAJA offices

Copies are also available for clients to take with them.

Request for Review of Decision

- 1 **NAAJA** will apply and maintain a decision review mechanism to enable an applicant, within 14 days of the date of written notification of the decision (or such longer period as may be allowed by **NAAJA** in the special circumstances of the case), to reconsider a decision regarding:
 - (a) Eligibility for legal casework assistance,
 - (b) Terms and conditions applied to the grant of legal casework assistance,
 - (c) Any other decision regarding the terms and conditions upon which legal casework assistance is available to them, or
 - (d) a refusal by **NAAJA** to pay part or all of the costs awarded against a person to whom legal casework assistance was provided in relation to a matter for which legal assistance was provided.
- 2 A request for Review of a decision can be made verbally or in writing. If the request is made verbally, the applicant must be provided with assistance to put it in writing e.g. a field officer or solicitor, not involved in the matter to date, could interview the client, write down their story and check that an accurate record of the complaint/request has been made. Client should sign that the record is accurate.
- 3 3. Where a review is requested **NAAJA** will ensure that the review is carried out by the CEO or his/her nominee who is and would be regarded by the applicant as impartial ("the Review Officer"). The Review Officer will usually be the section head of the relevant section if they were not the primary decision maker or another independent solicitor if they choose. The Review Officer will reassess the decision appealed against in accordance with all of the terms of this policy so far as they apply in the particular case. The Review Officer will give the applicant an opportunity to be heard and ensure that the applicant is promptly advised in writing of the outcome of the review.
4. The review officer will prepare a letter to the client advising the outcome of the review and their rights to appeal. This letter should include a copy of the standard NAAJA appeals policy as an attachment
5. The review must be conducted within fourteen (14) days of receipt of the client's request.

Appeals

- 1 **NAAJA** will provide a further tier of appeal, namely an Appeal Panel, after the review procedure. An appeal to the Appeal Panel should be lodged within 60 days of the applicant receiving notice of the result of the reconsideration, or within such longer time as the Appeal Panel allows in the special circumstances of the case.
- 2 The Appeal Panel should consist of:
 - (a) a representative from NAAJA who has not been previously involved in the decision making in relation to the matter to explain its position,

- (b) an experienced lawyer not in the employ of **NAAJA** (this can include a lawyer in the employ of another Aboriginal and Torres Strait Islander legal aid service),
- (c) and a third person with a relevant legal or other background who is not in the employ of **NAAJA**,

[NOTE: at least one member of the Appeal Panel must be a Board Director]

- 3 The Appeal Panel will review the decision, having regard to relevant terms of this policy so far as they apply to the particular case. The Appeal Panel has the power to reinstate aid subject to any reasonable conditions. The decision of the Appeal Panel is final. The CEO will ensure that the NAAJA Board is advised of all Appeal Panel's decisions.
- 4 The **non-NAAJA** members of the Appeal Panel will be drawn from a list comprised of private lawyers, public lawyers (e.g. government, LACs) and other suitably qualified persons who have previously indicated their willingness to hear appeals on a rostered basis. A list of non-NAAJA lawyers and other relevant people available for the Appeals panel will be established and maintained by the CEO.
- 5 With the exception of the **NAAJA** representative on the Appeal Panel, membership will be honorary and no remuneration will be provided to panel members.
- 6 The NAAJA member of the Appeal Panel is responsible for ensuring the applicant and the CEO receives written notification of the decision within seven (7) days
7. The CEO is authorised to vary the procedures and membership of the Appeal Panel when necessary i.e. where a review must be conducted urgently.

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COMPLAINTS, REVIEWS AND APPEALS PAMPHLET

Unhappy with NAAJA?

If you are unhappy with a decision made by NAAJA, or the way we have provided our services to you or another person, you can ask for that decision to be reviewed or make a formal complaint.

If we decide not to help you, or to impose conditions you don't like, you can request that the decision be reviewed.

If you are unhappy with the way we have provided our service or any other aspect of our operations you can complain.

All complaints are referred to the CEO for consideration.

Got a Complaint:

NAAJA tries to provide the most helpful and professional service that it can

What Service Should You Expect?

NAAJA wants to provide excellent service to all of our clients. This means that:

- you are kept informed about your case.
- that you receive clear advice in terms you can understand.
- that your instructions are carried out within a reasonable space of time.
- that your enquires are answered promptly. A NAAJA staff member should return your phone calls within 24 hours. You should receive a reply to letters within 10 Business days.
- cases can sometimes take a long time to resolve. You should be told when your solicitor expects the next step to be completed and when he or she expects the whole case to be finished.
- that you are treated with respect and courtesy by our staff.

If you have received poor service we want to know about it.

It is important that you have a good relationship with your solicitor. If you feel dissatisfied you should speak up straight away.

HOW TO COMPLAIN

We welcome your feedback on our service. We want to know about any complaints about the quality of our service.

Making a complaint does not prevent you getting further assistance from NAAJA. A complaint will not be held against you.

You can complain by:

- writing to us;
- making a telephone call to a staff member who will assist you to record your complaint, or
- attending an interview with a Client Service Officer

You should submit your complaint in writing or verbally or arrange a meeting with one of our staff. You can also ask that one of our field officers help you to write out your complaint.

WHAT HAPPENS

Complaints will be investigated by a Manager of the relevant section who will report to the CEO.

The CEO or a nominated officer will answer your complaint in writing. If the CEO agrees that your complaint is valid she or he will identify the steps that will be taken to fix the problem or prevent it happening again.

The CEO can:

- Ensure you are given a written report about the progress of your matter.
- Set a timetable for work to be completed.
- Assign your case to another solicitor at NAAJA.
- Identify poor work practices and replace them with better ones.

We will try to resolve your complaint within 40 days and will give you a written response. We will make one of our staff available to explain our response to your complaint if you wish.

If you are not satisfied with the way in which we deal with your complaint, we will advise you of other places that you can complain about this particular matter, including the Attorney Generals Department or the NT Law Society who investigate complaints about lawyers.

Review of our Decisions:

If NAAJA has refused to give you legal assistance, or has agreed to give you assistance on conditions that you do not like, you may ask to have that decision reviewed.

You will normally receive a letter advising you of our decision whether to help you or not. If you are unhappy about a decision made by NAAJA you can have the decision reviewed.

The decisions which can be reviewed, are:

- a decision to refuse to do your case;
- a decision to stop doing your Case;
- a decision not to refer your matter to a private solicitor;
- a decision not to refer your matter to the private solicitor of your choice;
- a decision to stop funding your Case through a private solicitor;
- a decision not to pay for a particular disbursement (e.g. a Doctor's bill or an expert's report).

A review is conducted by a NAAJA employee who had nothing to do with the original decision to refuse to give you assistance, or to impose particular conditions on that assistance.

To ask for a review to be conducted you can either write a letter to us or telephone or call in and ask for someone to assist you write down your reasons why we should change our decision. You must contact us within 60 days of the date we notified you of the decision.

We will attempt to resolve your request for a review as soon as possible but in any case within 14 days of your request. If you are still dissatisfied you may be entitled to appeal against the decision.

Appeals:

If the decision under review was:

- Not to run your case
- To stop acting for you
- Not to fund a private solicitor to act on your behalf

You can *appeal* this decision to a panel of three people. You must contact us within 60 days of the date we notified you of the outcome of the Review.

If the decision being reviewed was;

- Not to refer your matter to a private solicitor but to assign an in-house solicitor
- Not to fund a particular disbursement

- Not to refer your matter to a solicitor of your choice

The decision of the person appointed to conduct the review is final and cannot be appealed against.

The appeals committee will be made up of a representative from NAAJA who has not been previously involved in the decision making in relation to the matter, an experienced lawyer not employed by **NAAJA** and a third person with a relevant legal or other background that is not in the employ of NAAJA,

You may ask for an appeal by sending us a letter in writing or by asking for one of our staff to help you set out the reasons why the decision should be changed.

We will try to resolve your appeal as soon as possible or within 21 days.