



## Additional information to be provided by an applicant seeking assistance under the Special Circumstances (Overseas) Scheme

*Note: This documents sets out the information to be provided by an applicant in addition to completing the Department's Application Form.*

### Scope of the Scheme

The Guidelines for the Special Circumstances (Overseas) Scheme provide that the Attorney-General may authorise financial assistance for overseas legal costs and related expenses in special circumstances other than the purpose of recovering custody of a child.

Under the Guidelines, there are two bases upon which application for assistance may be made – ‘moral obligation’ or ‘compassionate grounds’, as follows:

- (a) where there are special circumstances which lead to the conclusion that there is a moral obligation on the Commonwealth to make a payment; or
- (b) where the merits of the applicant’s case for which the assistance is sought, the applicant’s lack of means to pay the costs, the lack of legal aid for the applicant in the country where the costs have been or are to be incurred and the applicant’s connection with Australia constitute, in the Attorney-General’s opinion, compassionate grounds for the Commonwealth’s meeting some or all of the costs.

#### (a) Moral obligation

The applicant should set out any matters which he or she considers would constitute ‘special circumstances’ leading to the conclusion that there is a moral obligation on the Commonwealth to meet the legal costs (paragraph (a) of the Guidelines).

##### 1.1 Special circumstances giving rise to moral obligation:

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**(b) Compassionate grounds**

The applicant should address the four considerations set out in paragraph (b) of the Guidelines relevant to determining whether there are *compassionate grounds* for granting assistance.

*Merits of case*

2.1 Details relating to the applicant’s overseas travel:

- Overseas country: .....
- Date travelled to that country: .....
- Purpose of travel: .....
- .....

2.2 Events giving rise to the proceedings or other legal action (for example, in overseas criminal cases, the circumstances leading to the arrest of the applicant and being taken into custody):

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2.3 For overseas criminal cases, the nature of the charge or charges the applicant faces and the sentencing options if the applicant pleads or is found guilty:

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2.4 The court and place in which the overseas proceedings have been or are proposed to be instituted:

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2.5 Any existing court orders (either Australian or overseas court orders) or other court documents relating to the applicant’s case, copies of which should be attached to this form:

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2.6 Evidence in support of the applicant’s case:

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2.7 The need for the applicant to attend the hearing:

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2.8 Witnesses proposed to be called by the applicant (name and location):

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2.9 The applicant’s proposed legal representation in the overseas country (name and role, for example, one solicitor and one barrister/advocate):

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2.10 If the applicant’s legal team comprises more than two people, reasons to justify this:

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2.11 If the applicant has engaged an overseas lawyer, a written opinion from the lawyer as to the applicant’s prospects of success in the proceedings, a copy of which must be attached to this form:

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3.3 The estimated cost of the applicant’s overseas travel or living expenses:

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Note: A grant of financial assistance under this Scheme will not extend to cover the applicant’s overseas travel and living expenses unless he or she is required to travel to the overseas country for the purposes of the proceedings and it is considered reasonable to cover those costs. A grant of financial assistance under this Scheme will not extend to cover other expenses such as the applicant’s medical costs.

3.4 Details of any costs incurred by the applicant prior to applying for financial assistance:

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Note: Generally, a grant of financial assistance under this Scheme will not extend to cover costs incurred by the applicant prior to the Department receiving a request for assistance.

3.5 Details of efforts by the applicant to minimise any costs (eg, by residing with relatives of friends while in the overseas country):

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3.6 Details of the applicant’s spouse or partner, or any other person or organisation who may be regarded as a financially associated person (name and relationship to applicant):

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Note: For the purpose of considering eligibility for financial assistance, the income and assets of a financially associated person is generally taken into account. A financially associated person includes any person or organisation from whom the applicant usually receives financial support or to whom the applicant usually provides financial support, and who could reasonably be expected to financially assist the applicant.

3.7 The financial contribution that the applicant is able to make towards the costs:

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***Availability of legal aid overseas***

4.1 The applicant’s eligibility for legal aid or legal assistance in the overseas country (this may include, for example, the availability of a court-appointed lawyer or pro bono assistance):

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Note: If legal assistance is available in the overseas jurisdiction, usually the applicant will not be eligible to receive financial assistance under this Scheme. The Scheme is not intended to be used to enable an applicant to hire a private lawyer in place of an overseas legal aid lawyer, court-appointed lawyer or public defender.

***Applicant’s connection with Australia***

5.1 Citizenship/Residency status:

- Date of birth: .....
- Place of birth: .....
- If born overseas, date arrived in Australia: .....
- Nationality/Citizenship (if a dual citizen, specify both): .....
- If not an Australian citizen, official residency status (for example, permanent resident): .....

5.2 Habitual/Ordinary place of residence:

- Present country of habitual/ordinary residence: .....
- Length of time lived outside Australia in last five years: .....

***Other relevant information***

6.1 Any other information that the applicant considers relevant to this matter:

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## **FURTHER NOTES:**

### **Recovery of costs**

2. If assistance is granted for an overseas civil case, applicants are expected to apply for a costs order from the other party or parties if they win the action. Where the applicant obtains an award of the court for costs, or compensation, in their favour, the applicant will be required to reimburse the Commonwealth from those monies to the extent to which it has paid the applicant's legal costs. The Commonwealth has the first right to be paid from any recovered costs or compensation.
3. If, during the course of or after the proceedings, the applicant, or the applicant's family, benefit financially as a consequence of the proceedings (eg by selling the story to the media), the applicant, or the applicant's family (as the case may be), will be required to reimburse the Commonwealth from those monies to the extent to which it has paid the applicant's legal costs.

### **Confidentiality**

4. Applications for financial assistance received by the Attorney-General's Department are treated in confidence. Disclosure or use of personal information is avoided where this is possible. However, there may be circumstances in which it is considered appropriate or necessary to disclose information relating to an individual application for purposes relevant to administering the Special Circumstances (Overseas) Scheme. The specific persons, bodies and agencies to which the Department may disclose information about application for assistance under this Scheme can vary according to each application, but will usually include the Department of Foreign Affairs and Trade, the Department of Prime Minister and Cabinet, federal Members of Parliament and Parliamentary Committees such as the Senate Estimates Committee. Individual case files may also be required to be made available for scrutiny by Departmental and external auditors.
5. Disclosure of the fact that a person has applied for financial assistance and information provided by an applicant, or on an applicant's behalf, may also be disclosed in the following circumstances:
  - it is in accordance with the express authority of the applicant
  - to correct the public record, or
  - if required by law.

### **Further information**

Financial Assistance Section  
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 Attorney-General's Department  
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 Barton ACT 2600  
 Australia

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