



Policy on external assistance applications

RESPONSIBILITY: Legal Section

SIGNED AND AUTHORISED: Authorised by CLC Executive by resolution EX2024.07.277
and by CLC Chief Executive Officer Les Turner

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1. Introduction

The CLC has functions under both the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**ALRA**) and the *Native Title Act 1993* (Cth) (**NTA**) to provide assistance to its Aboriginal constituents in relation to the CLC's region.

This is the Central Land Council's (**CLC**) policy on **external assistance** applications under both ALRA and the NTA. An external assistance application is a request for funding from the CLC to pay providers external to the CLC, in order to provide legal or other services which are ordinarily provided in-house by CLC staff.

This policy does not cover requests for assistance to be provided by or under the supervision of CLC employees. Those requests are dealt with on a day-to-day basis under the framework of the CLC's annual planning and prioritisation processes.

2. Policy environment and general CLC position

The CLC has a proud history of working harmoniously with its constituents, and a deep understanding of local systems of traditional law and custom. The CLC has a strong track record of successfully assisting constituents to achieve native title determinations under the NTA, grants of Aboriginal land under the ALRA, and protection of Aboriginal interests in land.

The CLC is funded by the Commonwealth Government to carry out its responsibilities under the ALRA and the NTA. This funding is limited. The CLC has statutory duties to manage these funds carefully and apply them efficiently.

In granting an external assistance application, it will generally be necessary for the CLC to withdraw the granted amount from funds previously allocated to other projects. If the external assistance application relates to contested litigation, the CLC may have an opportunity to make an additional funding application to the Commonwealth. However, these funds are also limited. This means that when the CLC provides funding in response to an external assistance application, it usually comes at the cost of reduced assistance to other CLC constituents.

It is significantly more efficient for the CLC to provide assistance through the lawyers, anthropologists and other staff it employs, rather than through private lawyers and other external service providers, who operate on a commercial basis. It is also often more effective for those services to be provided by CLC staff, who have a thorough understanding of the regional context and cultural considerations. However, the CLC recognises that in some limited circumstances it is appropriate to fund constituents' engagement of external lawyers or other service providers.

Decisions by the CLC to grant funding for external assistance are not taken lightly. Making an external assistance application does not guarantee that the CLC will provide any funding. Even if funding is provided, there is no guarantee the CLC will provide the full amount requested.

The CLC generally prefers to see matters being progressed to completion. However, if the CLC provides funding for part of a matter, no further funding is guaranteed. Any application for further external assistance will be assessed on its merits and should be made in a timely way, well before existing funds are exhausted.



Where an external assistance application relates to a dispute among constituents or between groups of constituents, the CLC generally prefers to support culturally-appropriate, non-adversarial approaches to dispute resolution. However, the CLC recognises that occasionally parties become entrenched in long-running or complex disputes, where a more formal resolution process may be the only viable way of determining an outcome.

Other than in the most exceptional of circumstances, any funding provided by the CLC in response to external assistance applications will only be provided for work that is commenced after the date on which a complete external assistance application is received by the CLC.

3. How to apply for funding

An external assistance application is made by a constituent of the CLC (or a number of constituents). External assistance applications are usually made on behalf of a broader group of constituents. Where this is the case, the applicant should consult with that broader group before making the application.

Typically, an external assistance application is prepared and sent to the CLC by the same lawyer or external service provider whom the applicant proposes to engage if the application for funding is successful. In such cases, the lawyer or service provider will usually be nominated by the applicant to be the contact person in relation to the application.

An external assistance application must be made to the CLC in writing. Where an external assistance application is being made without the assistance of a lawyer or external service provider, CLC staff can assist the applicant to put their application in writing, where requested.

The application should be addressed jointly to the CLC's Manager – Native Title, and Principal Legal Officer, and sent by post or email at: externalassistance@clc.org.au.

An external assistance application should include the following details:

- (a) Names of the constituents making the request for assistance.
- (b) A description of the constituents or Aboriginal group who the assistance is intended to benefit.
- (c) A description of the consultations carried out with those constituents or that group about the making of the application.
- (d) Name, telephone number, postal address and email address of a contact person who the CLC should talk to about application.
- (e) Description of the matter in relation to which assistance is sought.
- (f) Any information about the urgency of the request (particularly any statutory or Court-imposed timeframes).
- (g) A budget estimate that itemises all anticipated costs and disbursements, and includes a figure for the total amount of funding sought. If a consultant has agreed to a discounted rate for the purposes of the application, the budget should indicate both the consultant's standard commercial rate and the discounted rate being applied for the purposes of the budget.
- (h) The names of the lawyers and other professionals whom the applicant proposes to engage, with summaries of their relevant capacity and expertise.
- (i) Information addressing each of the specific considerations set out in the next section of this policy.



4. Key considerations for the CLC when making decisions about external assistance applications

To the extent that they are applicable and relevant to the application at hand, the following considerations are taken into account by the CLC in making a decision about an external assistance application, both in relation to a decision at first instance and any decision on review. The CLC may also take into account any other matter which it considers to be relevant to the application.

Benefit: What interests of the CLC's constituents will be protected or promoted by the external provision of services for which funding is sought? Will those interests be significantly prejudiced by the passage of time? How many people will benefit from the proposed assistance? Is the assistance sought reasonably likely to lead to a successful outcome, or prevent a significant injustice? Will the assistance help to preserve the cultural knowledge of people who are old or in poor health?

Detriment: To what extent will the interests of CLC constituents be negatively affected if the application is approved, including through the reduction of resources otherwise available to the CLC and its constituents? If the matter concerns a dispute between constituents, what attempts has the applicant previously made to resolve the dispute by non-adversarial means? Is the funding of external assistance likely to contribute to the efficient and effective resolution of an intra-Indigenous dispute? Will the funding of one party to a dispute likely require the provision of assistance or funding to other parties as well?

Authority of the applicant: Where the application is brought on behalf of a group of constituents, does the applicant have the cultural and/or legal authority to make the external assistance application on behalf of the group? Is the application made on behalf of a group that comprises all of the Aboriginal people with the relevant interest in the subject matter of the application? Do the group want the CLC to provide the assistance sought?

Other available sources of assistance: Is it appropriate and practicable for the assistance to be provided or arranged by CLC employees? Does the applicant have ownership or control of funds that could be used to pay for the assistance requested? Are there alternative sources of funding for the external assistance sought by the applicant (excluding funding that is generally available to all Aboriginal people in the Northern Territory)? If so, has the applicant taken steps to access that funding?

Amount of funding sought: Is the total amount of funding sought arguably commensurate with the significance and urgency of the matter and intended outcomes? Does the proposed use of funds appear to be efficient? Can the activities for which the applicant requires assistance be completed at a significantly lower cost? If the application relates to a matter that has previously been funded by the CLC: how efficiently and effectively has the initial grant of funding has been used? What impact will a further funding decision have on any other stakeholders to a dispute resolution process that is underway?

5. What the CLC does when an external assistance application is received

External assistance applications are decided by the Chief Executive Officer (CEO).

Before a decision is made, the CEO may seek further information from the applicant, consider other relevant CLC records, or seek advice or information from CLC officers or consultants. The CLC may consult with its constituents about the application, if the CEO considers it necessary.



The CEO will consider all information provided by the applicant and any other information he or she considers relevant. The CEO will assess that information against the considerations set out in this policy, to the extent they are relevant. All applications will be assessed in accordance with the CLC's responsibilities as an Aboriginal Land Council and native title representative body.

The CLC will use its best efforts to ensure a decision is made reasonably promptly, taking into account the particular circumstances of each application and any relevant deadlines. However, the CLC cannot guarantee that a decision will be made within any given timeframe. Applicants should seek to make an external assistance application as early as possible.

The CLC will provide the contact person and the applicant with its decision in writing, including brief reasons for the decision.

Where an external assistance application is successful, the applicant's nominated external lawyers or service provider will be required to enter into a funding agreement with the CLC on terms acceptable to the CLC. Funding will only be released on the presentation of compliant invoices in accordance with the process set out in the funding agreement.

6. Review of decisions

The applicant can request internal review of a decision by the CEO regarding an external assistance application. Internal review is carried out by the CLC's Executive Committee (**Executive**).

To request a review of a decision, the applicant should write to the CEO, and include in the request any further information which the applicant wants to be considered by the Executive on review. An application for review must be provided within **four weeks** of the applicant being advised of the initial decision.

Any member of the Executive who has a material personal interest in the subject matter of the application, including a traditional interest in the land or waters the subject of the application, will not be present during any deliberation by the Executive on the matter and will not take part in any decision by the Executive about the matter.

The Executive will consider all information considered by the CEO, as well as the CEO's reasons for their decision, any further information provided by the applicant, and any other information it considers relevant. The Executive will consider the issues anew and is not confined to only identifying errors in the CEO's decision.

The Executive may affirm the CEO's decision or reject the CEO's decision and substitute it with its own. The Executive will direct the CEO to provide the applicant's contact person and the applicant with its decision in writing, including a brief reason for the decision.

The CLC will use its best efforts to ensure a decision is made by the Executive in a timely way, taking into account the particular circumstances of each application and any relevant deadline. However, the CLC cannot guarantee that a decision will be made within any given timeframe. There is usually a one to two month period between each meeting of the Executive.

Additionally, if the application relates to native title funding, the applicant can apply under s 203FB of the NTA to the Secretary of the Commonwealth Department administering native title representative bodies for a review of the CLC's decision. [NIAA](#) can give you more information about how to do that.