

In deciding whether an applicant is eligible for legal aid, Legal Aid NSW may apply five tests.

## 1. JURISDICTION TEST

The Jurisdiction Test looks at whether legal aid is available in that jurisdiction and area of law. The following table sets out the types of matters where legal aid is available.

### Criminal Law Matters

<b>Local Court</b>	<ul style="list-style-type: none"> <li>✓ applications to remove driver licence disqualifications under Division 3A of Part 7.4 of the <i>Road Transport Act 2013</i></li> <li>✓ applications for annulment of conviction or sentence</li> <li>✓ apprehended domestic violence order proceedings</li> <li>✓ bail applications</li> <li>✓ breach of Community Corrections Order and Conditional Release Order proceedings</li> <li>✓ committal proceedings</li> <li>✓ contesting a forensic procedure application</li> <li>✓ Drug Court matters</li> <li>✓ matters commenced by a police Court Attendance Notice, excluding driving offences unless there is a real possibility of gaol or exceptional circumstances</li> <li>✓ matters commenced other than by a police charge if there is a real possibility of gaol or exceptional circumstances</li> <li>✓ participation in a restorative justice program e.g. Circle Court</li> </ul>
<b>District Court, Supreme Court, Court of Criminal Appeal and High Court</b>	<ul style="list-style-type: none"> <li>✓ appeals</li> <li>✓ applicant is the defendant in a prosecution in the Land and Environment Court under environmental protection legislation, in limited circumstances</li> <li>✓ bail applications</li> <li>✓ breach of Community Corrections Order and Conditional Release Order proceedings</li> <li>✓ conviction is to be quashed following a free pardon or inquiry</li> <li>✓ extended supervision orders, continuing detention orders (high risk offenders including terrorist offenders), post-conviction orders, control orders, and serious crime prevention orders</li> <li>✓ indictable matters</li> <li>✓ matters where the DPP has applied for an acquitted person to be retried</li> <li>✓ petitions, inquiries and applications to review a conviction or sentence</li> <li>✓ preventative detention, contact order and prohibited contact order matters</li> <li>✓ protected confiders in sexual assault communication privilege matters</li> </ul>
<b>Children's matters</b>	<ul style="list-style-type: none"> <li>✓ appeals</li> <li>✓ matters where the child is acting as an informant, in limited circumstances</li> <li>✓ matters where the child is participating in a restorative justice program</li> <li>✓ proceedings in the Children's Court including committals</li> <li>✓ trials and sentence matters in the District and Supreme Courts</li> </ul>
<b>Prisoner's matters</b>	<ul style="list-style-type: none"> <li>✓ life re-sentencing applications</li> <li>✓ Parole Authority hearings</li> <li>✓ reviews of segregation directions</li> <li>✓ visiting justice proceedings</li> </ul>
<b>Excluded matters</b>	<p><b>Legal aid is not available for these criminal law matters:</b></p> <ul style="list-style-type: none"> <li>✗ applicants in apprehended personal violence orders unless it is a child</li> <li>✗ Local Court defended hearings where the defence is frivolous or has no possible prospects of success</li> <li>✗ proceedings under the <i>Confiscation Of Proceeds Of Crime Act 1989</i> (NSW) and other legislation related to tainted monies/property</li> <li>✗ to commence proceedings in the Local Court except for ADVO proceedings or to remove driver licence disqualifications</li> </ul>

## Family Law Matters

State matters	<ul style="list-style-type: none"> <li>✓ adoption proceedings in exceptional circumstances, unless responding to an application or where the Court has ordered separate representation for a child</li> <li>✓ Care and Protection matters</li> <li>✓ compulsory schooling order proceedings in the Children's Court</li> </ul>
Commonwealth matters	<ul style="list-style-type: none"> <li>✓ child support and child maintenance</li> <li>✓ contempt of court proceedings where the applicant is the respondent</li> <li>✓ contravention of parenting orders</li> <li>✓ divorce and nullity of marriage, in limited circumstances</li> <li>✓ family dispute resolution</li> <li>✓ international child abduction, in limited circumstances</li> <li>✓ matters relating to the location and/or recovery of a child</li> <li>✓ parenting matters (including separate representation for children)</li> <li>✓ proceedings in the Family Court concerning a special medical procedure for a child</li> <li>✓ property settlement matters</li> <li>✓ spousal and de facto maintenance</li> </ul>
Excluded matters	<p><b>Legal aid is not available for these family law matters:</b></p> <ul style="list-style-type: none"> <li>✗ Enforcement proceedings (property)</li> </ul>

## Civil Law Matters

State matters	<ul style="list-style-type: none"> <li>✓ civil liberties breach e.g. false imprisonment, malicious prosecution</li> <li>✓ consumer protection</li> <li>✓ coronial inquests, in limited circumstances unless for Aboriginal and Torres Strait Islander families in relation to any Aboriginal and Torres Strait Islander death in custody</li> <li>✓ discrimination</li> <li>✓ extended supervision orders, continuing detention orders (high risk offenders including terrorist offenders), post-conviction orders, control orders, and serious crime prevention orders</li> <li>✓ human rights matters of significant public interest</li> <li>✓ matters relating to the making or review of a public health order</li> <li>✓ matters under Working with Children legislation (Working With Children Check)</li> <li>✓ matters where it is likely the applicant will lose his or her home</li> <li>✓ mental health and guardianship matters</li> <li>✓ matters under the <i>Trustee and Guardian Act 2009</i> (NSW)</li> <li>✓ protected estate matters</li> <li>✓ sexual assault communication privilege matters</li> </ul>
Commonwealth matters	<ul style="list-style-type: none"> <li>✓ Centrelink income and pension matters</li> <li>✓ Commonwealth decisions which affect a person's capacity to continue employment</li> <li>✓ discrimination</li> <li>✓ employment law matters where the applicant is a person 'at social disadvantage'</li> <li>✓ extradition proceedings</li> <li>✓ migration matters including cancellation of visa, partner visa and onshore protection visa in limited circumstances</li> <li>✓ proceeds of crime</li> <li>✓ reviews under the <i>National Disability Insurance Scheme Act 2013</i> (Cth)</li> <li>✓ war veteran's matters</li> </ul>
Excluded matters	<p><b>Legal aid is not available for these types of civil law matters:</b></p> <ul style="list-style-type: none"> <li>✗ damage to any property by a motor vehicle</li> <li>✗ proceedings related to tainted monies/property</li> <li>✗ medical negligence, public liability or personal injury matters</li> <li>✗ building disputes</li> <li>✗ disputes arising from commercial or investment transactions</li> <li>✗ defamation matters</li> <li>✗ intra-association disputes such as between members of unions or clubs</li> </ul>

- ✘ Local Court matters where the amount in issue is \$3000 or less
- ✘ matters under the *Succession Act 2006* (NSW) and matters involving disputes between family members over property or money (unless there is a likelihood that an applicant will lose their home as a result)

## 2. MEANS TEST

The Means Test looks at an applicant's income and assets to:

- assess whether an applicant is eligible for legal aid, and to
- determine the amount of initial contribution a successful applicant will be required to pay towards the costs of the legal services.

The Means Test consists of three sub-tests:

**Income Test** looks at the net assessable income of the applicant and any financially associated persons. This is the gross assessable income less allowable deductions. Applicants receiving an eligible Centrelink payment at the maximum rate will satisfy the Income Test.

Income test	Current variables
<b>Gross assessable income</b> (Includes all income except Family Tax Benefit Part A & B, Carer Allowance, Rent Assistance, NDIS amounts)	
<b>Less deductions</b>	
Income tax paid	
Housing costs	\$455 (Metropolitan)
	\$320 (Non-metropolitan)
Financially associated person allowance	\$200 (per FAP)
Dependant allowance	\$120 (per child)
Maintenance allowance	\$120 (maximum per child)
Childcare costs	\$325 (maximum)
<b>Net assessable income</b>	<b>\$400</b>

**Assets Test** looks at an applicant's net assessable assets. This is the gross assessable assets less excluded assets.

Assets test	Current variables
<b>Gross assessable assets</b> (Includes all assets including land, cash, shares, debentures and other investments)	
<b>Less excluded assets</b>	
Household furniture and effects	Reasonable value
Clothing	Reasonable value
Tools of trade	Reasonable value
Lump sum payments	Assessed under the income test
Home equity	\$521,100 (maximum)
Farm or business equity	\$287,750 (maximum)
Motor vehicle equity	\$ 20,000 (maximum)
NDIS amount	Amount received
Allowable assets	\$ 2,800 (single applicant)
	\$ 4,200 (with dependants or FAP)
<b>Net assessable assets</b>	<b>\$ 100</b> (contribution free limit)

## Ability to pay legal costs test

We also consider the applicant’s ability to pay legal costs, having regard to his or her general assets and ability to realise or secure a loan. An application will be refused where the applicant’s lifestyle suggests that he or she has access to sufficient means to pay for private legal representation.

### The means test is applied in all matters, except:

- ✗ advice and minor assistance services
- ✗ first appearance bail applications in Local Court criminal duty matters
- ✗ Drug Court matters
- ✗ family and civil law duty matters
- ✗ children in all criminal proceedings
- ✗ children in appeals to the District Court in care matters
- ✗ children in the Community Services List of NCAT and appeals to the Supreme Court
- ✗ children where an order for independent representation is made under the *Family Law Act 1975*
- ✗ some Mental Health Advocacy Service matters
- ✗ sexual assault communications privilege matters
- ✗ reviews under the *National Disability Insurance Scheme Act 2013* (Cth)
- ✗ ex-service personnel and their dependants for proceedings in the Administrative Appeals Tribunal under Part II of the *Veterans' Entitlement Act 1986* and the *Military Rehabilitation and Compensation Act 1988*

## 3. MERIT TEST

The purpose of a merit test is to assess whether it is reasonable in all the circumstances to grant legal aid. Legal Aid NSW has two merit tests:

<b>Merit Test A</b> (State matters and Cth civil and criminal matters)	<b>Merit Test B</b> (Commonwealth family law matters)
<p>We will consider whether it is reasonable in all the circumstances to grant aid, taking into account:</p> <ul style="list-style-type: none"> <li>• the benefit that the applicant might expect to gain by receiving legal aid, or</li> <li>• any disadvantage or harm to the applicant that might result from being refused legal aid; and</li> <li>• whether the applicant has reasonable prospects of success.</li> </ul>	<p>We will take into account:</p> <ul style="list-style-type: none"> <li>• the legal and factual merits and whether there are reasonable prospects of success</li> <li>• whether a prudent self-funding litigant would risk his or her funds in the proceedings, and</li> <li>• the appropriateness of spending limited public funds on the proposed legal action.</li> </ul>

### A merit test is applied in:

- ✓ Most non-criminal law matters
- ✓ Appeals in criminal law matters
- ✓ Supreme Court bail matters
- ✓ Some matters associated with Children’s Court proceedings

### A merit test is not applied in:

- ✗ Criminal law matters (except appeals and Supreme Court bail applications)
- ✗ Children in the Children’s Court
- ✗ Disabled persons in matters before the Guardianship Tribunal
- ✗ Children represented by an independent children’s lawyer after an order of the Family Court
- ✗ Most *Mental Health Act 2007* (NSW) matters.

## **4. AVAILABILITY OF FUNDS TEST**

Legal aid will only be granted if Legal Aid NSW determines that sufficient funds are available.

## **5. UNPAID CONTRIBUTIONS TEST**

If granted legal aid, an applicant will usually be required to make an initial contribution based on their income and assets. At the end of their matter, we may also recover the total legal costs where the applicant owns real property, has recovered costs, has recovered a sum of money or other asset, or there is a substantial improvement in their financial circumstances. If the applicant does not pay the contribution imposed, they will owe a debt to Legal Aid NSW.

An applicant will be refused legal aid if there is an existing debt owed to Legal Aid NSW, unless we are satisfied that it is an exempted matter or there are exceptional circumstances.