

What is Merit Test A?

Merit Test A asks “*whether it is reasonable in all the circumstances to grant legal aid.*”

In deciding whether it is reasonable in all the circumstances to grant legal aid, Legal Aid NSW will consider amongst other issues:

- the nature and extent of
 - any benefit that the applicant might expect to gain by receiving legal aid, or
 - any disadvantage or harm to the applicant that might result from being refused legal aid, and
- whether the applicant has reasonable prospects of success.

You may already be familiar with Merit Test A through your work in other legal aid matters, such as care and protection, criminal or civil law matters.

What is changing?

Merit Test A will now apply to all Commonwealth family law matters. This means that Merit Test A applies to all legally aided matters subject to a merit test.

Once the changes take effect, Merit Test A will simply be known as the Merit Test.

Why is it changing?

Applying Merit Test A to all legal aid matters, including Commonwealth family law matters, will simplify and streamline our eligibility policies.

The focus on “whether it is reasonable in all the circumstances to grant legal aid” will also help achieve more consistent and transparent decisions about merit.

How is it different to the previous merit test?

Merit Test B was made up of three separate tests and did not ask Legal Aid NSW to consider the overall impact of its decision.

We expect that Merit Test A, which asks whether it is reasonable in all the circumstances to grant legal aid, is better able to accommodate:

- especially vulnerable clients
- complex cases, particularly those involving competing live with applications, “no time” cases, risk that children will be removed from their primary carer or where FACS has intervened
- cases where it is difficult to determine whether the client is “more likely than not to succeed”, as was required in Merit Test B, but due to the client’s personal circumstances or the particular facts of their case, should be legally aided.

Merit Test A in Commonwealth Family Law Matters

INFO SHEET

How does it impact my work with legal aid clients?

Merit Test A will apply to all Commonwealth family law matters from 1 January 2022.

From 1 January 2022, you must consider and advise us whether:

1. your client's case satisfies Merit Test A and
2. their application should be approved or refused.

If your client already has legal aid funding in their Commonwealth family law matter, the change will not impact their existing grant of aid. Merit Test A will only apply to any extension applications determined after 1 January 2022.

What are my obligations?

Merit Test A continues to be just one of many tests clients must to satisfy to be eligible for legal aid. You are responsible for ensuring your client satisfies any eligibility policies relevant to their application for aid.

The Quality Standards require you to consider Legal Aid NSW eligibility policies and guidelines before you apply for a grant or extension of legal aid. You must also make a recommendation about whether your client satisfies our policies, including the merit test, and whether their application should be approved or refused.

If you do not think your client's case satisfies the merit test, or any other policies relevant to their application for aid, you must:

- seek discretion (where available) or
- recommend the application be refused.

You must retain copies of any documents relevant to your client's application or extensions and the assessment of their eligibility for legal aid.

Where can I get more information?

You can find more information about our policies on [Policy Online](#).