ERA and FDR policy changes

October 2026

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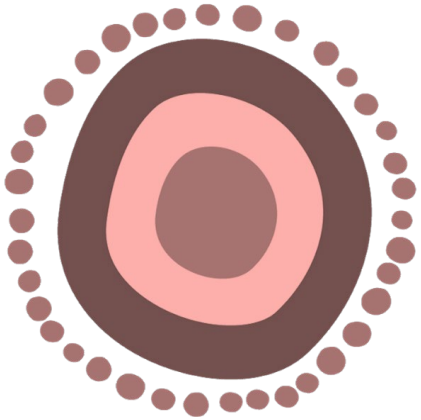
Acknowledgement



We acknowledge that we meet on Aboriginal land and pay our respects to the Elders past and present, and Aboriginal colleagues present today.

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What we will cover today

Changes to Early Resolution Assistance (ERA) policies in family law

- Care and protection
  - Removal of the ERA Means Test
- Commonwealth family law
  - Parenting – 1 mediation per 12 months
  - Property – minimum net asset pool of $40,000
  - Litigation intervention and court ordered mediation (LI and COMP) – only if there is an ICL + 1 legally aided party
  - No more un-itemised disbursements ($25)
- Policy Changes in Practice

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ERA policy changes

Remember – our different service types

ERA is a service type used for matters not in court:

- Early intervention mediations (i.e. pre-litigation)

A grant of legal aid is for matters in court:

- Legal Aid NSW also funds mediations that are part of the court proceedings – either court ordered mediations (COMP) or other litigation intervention mediations (LI)

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ERA – Care matters

What has changed, and why?

The Board approved the removal of the ERA Means Test for care mediations, including:

- LAFPA mediations
- Section 86 mediations
- Pre-litigation adoption mediations
- Post-litigation adoption mediations

- This ensures alignment between eligibility for ERA and grants of aid in most care matters, which are not means tested.
  - Note: grants of aid for adoption matters are subject to the Means Test, but the ERAs are not.

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ERA – Commonwealth family

What has changed, and why?

The Board approved changes to limit access to ERA, as part of cost saving measures. This is done through:

1. Limiting applicants to one ERA per matter, per year
2. Limiting when we will fund court ordered mediations

When do the changes take effect?

These changes take effect from **12 October 2026**

Any applications determined or submitted after 12 October 2026 will be in determined in accordance with the new policy.

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ERA for parenting

3.2.1 - Early Resolution Assistance (ERA) Mediation - Parenting

ERA is available for mediation in parenting matters where the applicant is:

- a parent or person who has or had day to day responsibility for the child, or
- a person who is significant to the care and well-being of the child.

To be eligible for ERA the applicant must satisfy the following tests:

- ERA Means Test, and
- ERA Merit Test.

- If the applicant is a child, Legal Aid NSW must be satisfied it is appropriate they participate in the early intervention mediation conference.

Note: applicants can only apply for and access one ERA service per matter per year, unless there are exceptional circumstances.

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ERA for parenting

1.7 ERA Merit test

In assessing an application for Early Resolution Assistance (ERA), we must be satisfied that:

- it is likely that ERA will resolve the dispute, and
- the applicant is committed to the early resolution of their dispute

Applying the merit test will be straightforward in most cases, and the test is a lower bar than the merit test for grants of legal aid. However, it is important to consider the test as there will still be some clients who do not satisfy it

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ERA for property

3.3.1 - Property settlement matters - mediation (ERA)

Early Resolution Assistance (ERA) is available for mediation in property settlement matters where the net value of the pool of assets is between $40,000 and $850,000 (excluding superannuation), and

- the applicant is an Aboriginal or Torres Strait Islander person, or
- the applicant has a disability, or
- the applicant is 55 years of age or over, or
- domestic or family violence has been a factor in the applicant's relationship with the other party.

To be eligible for ERA the applicant must satisfy the following tests:

- ERA Means Test,
- ERA Merit Test, and
- the Forum Test

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Policies for grants of aid

Changes to policies parenting 3.2.3 (parents), 3.2.5 (third parties), 3.2.6 (children, not ICLs), and 3.3.2 (property)

In the parenting and property policies for grants of aid, the references to the section 60I certificate requirements have changed.

The policies now say:

An applicant must have a certificate issued by the Legal Aid NSW Family Dispute Resolution Unit under s60I of the *Family Law Act 1975* (Cth) in relation to the dispute, unless:

- the matter is urgent, or
- the applicant has attended a lawyer assisted mediation with a private provider or accredited service provider and has a s60I certificate issued within the past 12 months.

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One ERA per matter?

What do you mean by one ERA per matter?

An applicant for legal aid is only eligible for one ERA service (i.e. the mediation, not the application) in a matter in any 12-month period.

"Matter" is broad – the legal matter, not the matter type.

- i.e. applicants can't get one ERA for a "spend-time" matter type and then another when they submit a "live with" matter type.

How will we manage this?

- Template changes – lawyers asked whether they are seeking a second mediation and, if they are, provide details of the exceptional circumstances
  - These matters will **not** go into the work pool, but the information is there if needed

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Exceptions to the rule

An applicant can only be approved a second ERA in 12 months if there are **exceptional circumstances**

Guideline: 3.17 Exceptional circumstances in ERA matters

- Early Resolution Assistance (ERA) funding is not available to an applicant to attend more than one Commonwealth family law early-intervention mediation in a 12-month period unless there are exceptional circumstances.
- Legal Aid NSW will be satisfied there are exceptional circumstances if, since the previous mediation, there has been:
  - a significant change in circumstances, or
  - new serious safety concerns.
- Exceptional circumstances do not include a recommendation that the parties attend a further mediation, or that a further mediation may resolve the remaining issues in dispute.

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Exceptions to the rule

Who determines exceptional circumstances?

Lawyer determined applications

- In house and panel lawyers will determine whether there are exceptional circumstances in accordance with the policy and guidelines
- The ERA template will be changed so that lawyers will be asked whether they are seeking a second mediation and, if they are, will be prompted to provide details of the exceptional circumstances.

Grants determined applications

- If a client applies directly to Legal Aid NSW
- If they haven't, then the second ERA should be refused

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Mediation during court proceedings

Changes to Court Ordered and Litigation Intervention mediations

Legal Aid NSW will only fund mediation in matters where there is an independent children's lawyer and at least one legally aid party.

This does not affect matters in the Specialist Indigenous List

- The Specialist Indigenous mediation program continues

Lawyers are still funded to appear in Dispute Resolution Conferences and Conciliation Conferences arranged by the FCFCOA

- Note that this does **not** include privately funded mediations

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Disbursements

- $25 un-itemised disbursement no longer available

- Other disbursement remain available:
  - Interpreter fees
  - Real estate valuation

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Contributions in Family Law ERA

All eligible applicants must pay a $75 initial contribution

- Clients in custody or detention are exempt
- This contribution helps us deliver as many services as we can to eligible applicants.
- The contribution does not apply to Care & Protection ERA

Contributions in property matters

Final contribution requirements are unchanged.

Remember to:

- advise you client about the likelihood they will pay a final contribution,
- take steps to secure it (i.e. careful drafting of the orders) and
- inform Legal Aid NSW of the agreement so we can determine the final contribution

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Policy changes in practice

Strategies for lawyers to create robust agreements

- Focus on utilising the 4-hour mediation time to reach farsighted agreements wherever appropriate
- Clearly articulate staged time where this is needed (eg for re-introduction, or changed time when a child starts school)
- Discuss foreseeable changes and issues so that these can be addressed in agreements
- Build in clear consequences – for example following drug test results
- Discuss contingencies for non-compliance, failure to agree on a major long-term issue, and changes for children
- Encourage discussion of supports available outside Legal Aid NSW

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Property Mediation Strategy

Property mediations

PROPERTY ONLY

- One session vs Two session
- Clarify disclosure & balance sheet at end of 1ance sheet at end of 1st session if applicable

CHPR (Children and property)

- End of children session – FDRP will ask lawyers/parties to clarify disclosure & balance sheet. Come prepared to discuss.

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Property Mediation Strategy cont...

Property mediations

- Standard model is a single mediation.
- Disclosure and valuations need to be done beforehand.
- Legal advice and generation of options is part of pre mediation preparation for which there is provision in ERA Invoice.
- FDRPs can consider having a short first session if necessary for disclosure. FDRPs will seek details of further disclosure requested and timetable for provision and note in the FDRP's report.
- Settlement documents are covered in ERA Invoice. Consider doing drafts before the mediation for signing as part of the mediation.

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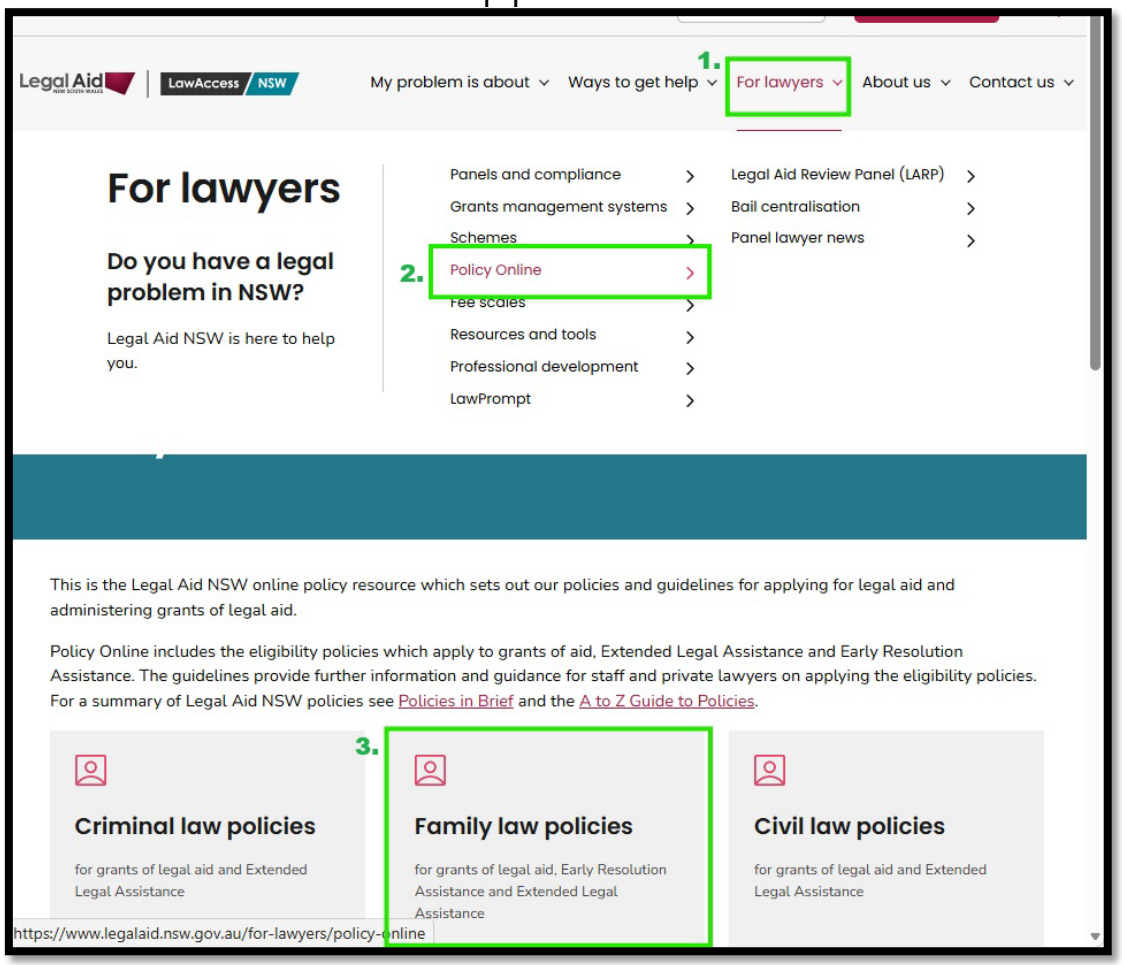
Where can I find the policies?

All Legal Aid NSW eligibility policies are published here: Policy Online

- **Remember:** you are delegated to determine ERA applications and must do so in accordance with the relevant policy



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