3.2 Parenting

Policy Statement

Where an applicant has a parenting and property matter, Legal Aid NSW expects that the proceedings will be conducted together.

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.

3.2.2 - Recovery and location orders

Legal aid is available for proceedings under the *Family Law Act 1975* (Cth) for the recovery of a child.

To be eligible for legal aid the applicant must satisfy:

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

Note: a grant of aid for a recovery order application covers an interim application for a location and/or Commonwealth information order where necessary.

Note: see Family policy 3.2.3 Court proceedings for parenting matters (below), for recovery applications where there are no parenting orders in place.

See Family Fee guideline 2.4 Cost Management about costs cap for these types of matters.

3.2.3 - Court proceedings for parenting matters

Where an applicant for legal aid has a parenting matter and a property matter, Legal Aid NSW expects that the proceedings will be commenced together. A grant of legal aid is only available for the property matter where the applicant is also eligible for their parenting matter, unless there are exceptional circumstances. See Family Law Policy 3.3.3 Property settlement and parenting matters.

The types of parenting matters for which legal aid may be available under the *Family Law Act 1975* (Cth) include disputes relating to who a child will:

- live with,
- spend time with, and
- communicate with.

3.2.3.1 - Parenting matters - for parents

Legal aid is available to parents in court proceedings for parenting matters. Unless the matter is urgent, the 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.

To be eligible for legal aid the applicant must satisfy:

- the Means Test,
- the Merit Test,
- the Forum Test, **and**
- there is a dispute about a substantial issue (Family Law Guideline 3.13).

Where an applicant for legal aid has a parenting matter and a property matter, legal aid will only be available for the parenting matter where the applicant is also eligible for their property matter, unless there are exceptional circumstances: see Family Law Policy 3.3.3 Property settlement and parenting matters.

Note: All early intervention mediation for family law disputes is administered as an Early Resolution Assistance (ERA) service type and facilitated by the Legal Aid NSW Family Dispute Resolution Unit. For eligibility policies for mediation in parenting matters see: Family ERA policy 3.2.1

Note: A grant of aid for a parenting order application covers an interim application for a recovery order, location and/or Commonwealth information order where necessary.

Note: Where the applicant for legal aid is in custody see Family Law Guideline 3.2.

3.2.3.2- Parenting matters - Independent Children's Lawyer

Where the Court makes an order for the independent representation of the child's interests in parenting proceedings pursuant to s 68L of the *Family Law Act 1975* (Cth), Legal Aid NSW may fund an Independent Children's Lawyer if:

- the child is Aboriginal,
- there are allegations of child abuse, child neglect or domestic and family violence,
- there are issues of significant medical, psychiatric or psychological illness or personality disorder in relation to either party or a child or other person having significant contact with the child,
- the material filed by the parents indicates that neither parent seems a suitable carer for the child,
- there is an application in the court's welfare jurisdiction relating in particular to the medical treatment of the child, or
- Legal Aid NSW is satisfied there are exceptional circumstances in which the participatory needs of the child can only be addressed by the appointment of an ICL.

There is no means or merit test applied.

Note: Where a dispute over the medical treatment of the child involves a special medical procedure, see: Family Law Policy 3.9 Special Medical Procedures.

3.2.3.3- Parenting matters – for people who are not parents

Legal aid is available to people who are not parents in court proceedings for parenting matters where Legal Aid NSW is satisfied that:

- the applicant for legal aid is significant to the care, welfare and development of the relevant child, and
- it is in the child's best interests.

Unless the matter is urgent, the applicant must have a certificate issued by the Legal Aid NSW Family Dispute Resolution Unit under s 60I of the *Family Law Act 1975* (Cth) in relation to the dispute.

To be eligible for legal aid the applicant must satisfy:

- the Means Test,
- the Merit Test,
- the Forum Test, **and**
- there is a dispute about a substantial issue (Family Law Guideline 3.13).

Note: All early intervention mediation for family law disputes is administered as an Early Resolution Assistance (ERA) service type and facilitated by the Legal Aid NSW Family Dispute Resolution Unit. For eligibility policies for mediation in parenting matters see: Family ERA policy 3.2.1 (above).

3.2.3.4 - Parenting matters – for children

Legal aid is available to children in court proceedings for parenting matters.

Unless the matter is urgent, the applicant must have a certificate issued by the Legal Aid NSW Family Dispute Resolution Unit under s 60I of the *Family Law Act 1975* (Cth) in relation to the dispute.

To be eligible for legal aid the applicant must satisfy:

- the Means Test,
- the Merit Test,
- the Forum Test, **and**
- there is a dispute about a substantial issue (Family Law Guideline 3.13).

Legal aid will **not** be granted to a child if Legal Aid NSW determines that:

- the court proceedings should have been initiated by a parent or a person who has parental responsibility for the child, **or**
- the matter could have been dealt with by an order for the appointment of an independent children's lawyer.

Note: All early intervention mediation for family law disputes is administered as an Early Resolution Assistance (ERA) service type and facilitated by the Legal Aid NSW Family Dispute Resolution Unit. For eligibility policies for mediation in parenting matters see: Family ERA policy 3.2.1 (above).

3.2.4 - Contraventions

Legal aid is available to make an application or respond to an application in court proceedings for contravention of parenting orders.

To be eligible for legal aid the applicant must satisfy:

- the Means Test,
- the Merit Test,
- the Forum Test.

Where a related application to vary orders has been filed, please see Family policies 3.2.5 Variations (below).

Note: Legal aid is not available for enforcement of parenting orders.

3.2.5 - Variations

3.2.5.1 Varying or discharging parenting orders - for parents

Legal aid is available to parents for court applications to vary or discharge parenting orders made under the *Family Law Act 1975* (Cth).

Unless the matter is urgent, the applicant must have a certificate issued by the Legal Aid NSW Family Dispute Resolution Unit under s 60I of the *Family Law Act 1975* (Cth) in relation to the dispute.

To be eligible for legal aid the applicant must satisfy:

- the Means Test,
- the Merit Test,
- the Forum Test,
- there is a dispute about a substantial issue (Family guideline 3.13), **and**
    - there has been a material change in circumstances (Family guideline 3.8) since the parenting orders or parenting plan were made, **or**
    - the court application is imperative.

Note: All early intervention mediation for family law disputes are administered as an Early Resolution Assistance (ERA) service type and facilitated by the Legal Aid NSW Family Dispute Resolution Unit. For eligibility policies for mediation in parenting matters see: Family ERA policy 3.2.1 (above).

Note: Where the applicant for legal aid is in custody see Family guideline 3.2.

Note: An example of a situation where a court application may be considered to be imperative is when a change in circumstances makes it impossible for the legal aid applicant to comply with the original court order.

3.2.5.2 - Varying or discharging parenting orders – Independent Children's Lawyer

Where the Court makes an order pursuant to s 68L of the *Family Law Act 1975* (Cth) for the independent representation of the child's interests in proceedings to vary or discharge parenting orders, Legal Aid NSW may fund an Independent Children's Lawyer if:

- the child is Aboriginal,
- there are allegations of child abuse, child neglect or domestic and family violence,
- there are issues of significant medical, psychiatric or psychological illness or personality disorder in relation to either party or a child or other person having significant contact with the child,
- the material filed by the parents indicates that neither parent seems a suitable carer for the child,
- there is an application in the court's welfare jurisdiction relating in particular to the medical treatment of the child, or
- Legal Aid NSW is satisfied there are exceptional circumstances in which the participatory needs of the child can only be addressed by the appointment of an ICL.

There is no means or merit test applied.

Note: Where a dispute over the medical treatment of the child involves a special medical procedure, see: Family policies 3.9 Special Medical Procedures.

Note: Legal Aid NSW will not automatically fund an Independent Children's Lawyer on the basis the child's interests were represented by an ICL in the primary proceedings.

3.2.5.3 - Varying or discharging parenting orders – for people who are not parents

Legal aid is available to people who are not parents for court applications to vary or discharge parenting orders made under the *Family Law Act 1975* (Cth) where Legal Aid NSW is satisfied that:

- the applicant for legal aid is significant to the care, welfare and development of the relevant child, **and**
- it is in the child's best interests.

Unless the matter is urgent, the 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.

To be eligible for legal aid the applicant must satisfy:

- the Means Test,
- the Merit Test,
- the Forum Test

- there is a dispute about a substantial issue (Family guideline 3.13), **and**
    - there has been a material change in circumstances (Family guideline 3.8) since the parenting orders or parenting plan were made, **or**
    - the court application is imperative.

Note: All early intervention mediation for family law disputes is administered as an Early Resolution Assistance (ERA) service type and facilitated by the Legal Aid NSW Family Dispute Resolution Unit. For eligibility policies for mediation in parenting matters see: Family ERA policy 3.2.1 (above).

Note: An example of a situation where a court application may be considered to be imperative is when a change in circumstances makes it impossible for the legal aid applicant to comply with the original court order.

3.2.5.4 - Varying or discharging parenting orders – for children

Legal aid is available to children for court applications to vary or discharge parenting orders made under the *Family Law Act 1975* (Cth).

Unless the matter is urgent, the 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.

To be eligible for legal aid the applicant must satisfy:

- the Means Test,
- the Merit Test,
- the Forum Test,
- there is a dispute about a substantial issue (Family guideline 3.13), **and**
    - there has been a material change in circumstances (Family guideline 3.8) since the parenting orders or parenting plan were made, **or**
    - the court application is imperative.

Legal aid will **not** be granted to a child if Legal Aid NSW determines that:

- the court proceedings should have been initiated by a parent or a person who has parental responsibility for the child, **or**
- the matter could have been dealt with by an order for the appointment of an independent children's lawyer.

Note: All early intervention mediation for family law disputes is administered as an Early Resolution Assistance (ERA) service type and facilitated by the Legal Aid NSW Family Dispute Resolution Unit. For eligibility policies for mediation in parenting matters see: Family ERA policy 3.2.1 (above).

Note: An example of a situation where a court application may be considered to be imperative is when a change in circumstances makes it impossible for the legal aid applicant to comply with the original court order.

3.2.6 - International child abduction

Legal aid is available for the following types of international abduction matters:

- to defend an application to the court against proceedings brought by Family and Community Services under the *Family Law (Child Abduction Convention) Regulations 1986* (Cth) for
    - the return of a child who has been removed from a convention country to, or retained in, Australia, **or**
    - for access to a child who is living in Australia

- to make an application to the court under the *Family Law (Child Abduction Convention) Regulations 1986* (Cth) for a declaration that the removal of a child from Australia to a convention country, or the retention of a child in a convention country, is wrongful within the meaning of the Convention.

To be eligible for legal aid the applicant must satisfy:

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

Policies in effect until 30 June 2026

Share

Delegation Instrument

Eligibility Tests

Criminal law policies

3 Family law policies

Family law guidelines

3.1 Care and Protection

3.2 Parenting

3.3 Property

3.4 Divorce

3.5 Child support and maintenance

3.6 Adoption

3.7 Appeals

3.8 Contempt of court

3.9 Special medical procedures

Extended Legal Assistance (ELA)

Civil law policies

Apprehended Violence Orders

Administration of grants of aid

Legal Aid Commission Act

Service Types

Policy resources

Acknowledgement of Country

Legal Aid NSW with our team at LawAccess NSW acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of the land and waters. We acknowledge and pay respects to their Elders, past and present. In our work, we are committed to advocating for the rights of Aboriginal and Torres Strait Islander people and communities.

Explore

My problem is about...

Ways to get help

For lawyers

About us

Contact us

Follow us