

Skip to content



Search

Contact Us

Home

- [About Us](#)
- [Get Legal Help](#)
- [FAQs about Legal Aid](#)
- [Legal Info](#)
- [Ministerial Media Releases](#)
- [News and Events](#)
- [Our Policies](#)
- [Publications](#)
- [Partnerships and Projects](#)
- [NSW State Plan](#)
- [Jobs with Legal Aid](#)
- [Links](#)

Legal Aid NSW > About Us > Corporate Information > Means Test Guidelines

Means Test Guidelines

Means Test A guidelines apply to these matters:

- all civil law matters
- all administrative law matters
- family law matters including 'care' and Community Services Division of the Administrative Decisions Tribunal matters *excluding* duty scheme for parents in child welfare proceedings.
- Criminal Indictable matters and all Criminal Appeals
- certain *Mental Health Act* matters and *Guardianship Act 1987* matters
- War service pension claims
- Committal hearings and applications under s48E of the *Justices Act 1902* as part of the Commissions's pilot scheme

See Means Test Exemptions for matters which are exempt from the Means Test.

Eligibility

The applicant's eligibility for legal aid in these matters is determined by:

- applicant's net assessable income
- applicant's net assessable assets
- assessment of applicant's ability to pay legal costs.
- NOTE: Any reference to the means of the applicant includes where appropriate, the means of any financially associated persons.

Contribution

In some exempt matters the applicant does not have to pay a contribution towards the cost of legal representation. In other matters the contribution to be levied under the means test guidelines is the sum of the contributions levied on net assessable income and on assets. If the total contribution exceeds the estimated cost of the proceedings,

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- > Panels - Information
- > Grants Online
- > Fee Scales
- > Community Referrals
- > Important Documents and Tools
- > Childrens Legal Service Bulletin
- > CLSD - Cooperative Legal Service
- > The New Grants Online

the applicant is ineligible for aid.

It is also the Commission's policy that, at the conclusion of the case or the legal aid grant, where possible, either all or part of the total costs of the matter should be recovered from the person granted legal aid, depending on the person's financial situation. In cases where the person recovers money or property in the proceedings, the Commission will seek to recover the total costs.

Discretion

Discretion can be exercised to grant legal aid to applicants who exceed means test guidelines, and to elderly applicants with excess home equity. There is also a discretion to reduce or increase the amount of contribution or waive the contribution.

Am I financially eligible for legal aid?

Means Test B guidelines apply to these matters:

- Local Court criminal matters
- *excluding* Committal hearings and applications under s48E of the *Justices Act 1902* as part of the Commission's pilot scheme
- Supreme Court bail applications
- Representation provided by the Prisoners' Legal Service
- Duty scheme for parents in child welfare proceedings

See Means Test Exemptions for matters which are exempt from the Means Test.

Eligibility

To qualify for legal aid, applicants must satisfy both the net assessable income guidelines and the net liquid assets guidelines.

NOTE: Any reference to the means of the applicant includes where appropriate, the means of any financially associated persons.

Contributions in defended Local Court criminal matters

(a) Amount of contribution

Under Means Test B a contribution is only payable by defendants in defended Local Court criminal matters. In these matters an eligible defendant must pay a \$75

contribution.

There is *no right* of appeal to the Legal Aid Review Committee requiring the defendant to pay this contribution.

(b) Matters exempt from contributions

Initial contributions are **not** levied on:

- pleas, mentions and bail applications in Local Court criminal matters
- informants in Local Court criminal matters, including defended matters

(c) Discretion to waive contribution

There is a discretion to waive the contribution. This discretion may only be exercised where payment of the contribution

- would cause the legally assisted person special hardship, or
- is impractical in the circumstances.

For example, where the legally assisted person is in custody.

(d) Who can exercise this discretion?

- regional office senior solicitors
- legal officers Grade V or above
- clerks Grade 9 and above in the Criminal Law Assignments Section

(e) Final payments

It is also the Commission's policy that, at the conclusion of the case or the legal aid grant, where possible, either all or part of the total costs of the matter should be recovered from the person granted legal aid, depending on the person's financial situation. In cases where the person recovers money or property in the proceedings, the Commission will seek to recover the total costs.

Discretion to refuse legal aid to applicants whose income and/or assets fall below means test guidelines

(a) Discretion available to refuse legal aid

Discretion can be exercised to refuse legal aid to applicants whose income and/or assets fall below the levels provided in the means test

guidelines. This discretion can be exercised in the following situations, amongst others:

- Where the applicant is able to afford the cost of legal proceedings having regard to his/her general assets.
- Where the applicant has substantial fixed assets or an interest in business assets:
 - that could be realisable; or
 - against which the applicant could secure a loan to cover the cost of legal proceedings.
- Where the applicant's lifestyle or standard of living appears to be supported by means beyond those disclosed in the legal aid application.

b) Who can exercise discretion?

The officer determining the application for legal aid has the discretion to refuse legal aid to applicants whose income and/or assets fall within the Means Test guidelines.

