



Australian Government

Norfolk Island Legal Aid Guidelines for the Provision of Legal Assistance

Authority

These Guidelines are made under section 14 of the *Legal Aid Act 1995* (NI) by the First Assistant Secretary, Territories Division, Department of Infrastructure, Transport, Regional Development, Communications and the Arts, and delegate of the Minister under section 5 of, and item 1.49 of the Schedule to, the *Minister's Norfolk Island Delegation Instrument 2019*.

Commencement

These Guidelines commence on 1 April 2024.

Types of matters

Legal assistance may be provided for criminal and family law matters. It is not generally provided for civil law matters such as fines, bankruptcy, credit and debt matters, neighbourhood disputes, personal injury, wills and estates, and professional and medical negligence.

Appeals

Generally, legal assistance will not be provided for appeal matters. However, if the appeal is related to a criminal or family law proceeding, legal assistance may be considered if the appeal has reasonable prospects of success.

An applicant may be requested to provide further specified information (such as an opinion from counsel) to assist with determining prospects of success.

Means test

A means test which considers the applicant's income, assets and expenses will be the basis on which the applicant's ability to afford the cost of obtaining the legal services, for which the legal assistance is being sought, will be assessed. The means test is provided at **Annexure A**.

Merits test

The following matters may be considered when determining whether it is reasonable in all the circumstances to provide legal assistance:

- the nature and extent of any benefit that may accrue to the person,
- the detriment that may be suffered by the person,
- whether the proceeding is likely to terminate in a manner favourable to the person,
- whether an "ordinary self-funding litigant" would risk the funds in the proposed proceedings,
- that it is appropriate to spend limited public funds on the matter, and
- whether the proposed course of action or defence has reasonable prospects of success.

An applicant may be requested to provide further specified information (such as an opinion from counsel) to assist with determining the prospects of success.

Funding caps

Hourly rate

The number of hours requested to be funded will be assessed for reasonableness against what would normally be funded for a similar matter in other Australian jurisdictions.

- The maximum rate payable for solicitors is \$175 per hour.
- The maximum rate payable for counsel/barristers is \$400 per hour.

Criminal law matters

- The funding cap for criminal law matters with one defendant is \$50,000.
- The funding cap for each co-accused is \$25,000.

Family law matters

- The funding cap for family law matters is \$12,000 for each party.
- The funding cap does not apply to funding for independent children's lawyers.

Appeals

- The funding cap for criminal law appeal matters is \$15,000
- The funding cap for family law appeal matters is \$12,000

Work undertaken prior to approval

- The funding cap for work undertaken by a solicitor prior to an application for legal aid being approved is four hours. Funding will not generally be provided for any other work (e.g. by counsel or other expert providing advice) undertaken prior to an application for legal aid being approved.

Exceptions

Funding in excess of the hourly rates and funding caps set by these Guidelines may be approved in exceptional circumstances.

Sarah Vandenbroek

First Assistant Secretary

Territories Division, Department of Infrastructure, Transport, Regional Development,
Communications and the Arts

Delegate of the Minister for Regional Development, Local Government and Territories

Date: 18 March 2024

Norfolk Island Legal Aid Means Test

Section 18 of the Norfolk Island *Legal Aid Act 1995* (NI) (the Act) provides that legal assistance may be provided if the person is unable to afford the cost of obtaining the legal services for which legal aid is being sought and it is reasonable in all the circumstances to provide the legal assistance.

This Guide sets out the means test which will be used when assessing whether a person is unable to afford the cost of obtaining legal services. The test is based on the tests used in other jurisdictions with some adjustments to suit the circumstances in Norfolk Island.

Means test

Subsection 18(2) of the Act sets out the matters the decision-maker shall have regard to when making a decision whether a person unable to afford the cost of obtaining legal services including:

- (a) the income of the person
- (b) the cash that is readily available to the person or can be made available
- (c) the debts, liabilities and other financial obligations of the person
- (d) the cost of living
- (e) the cost of obtaining the legal services from private legal practitioners
- (f) any other matter affecting the ability of the person to meet the cost of obtaining the legal services from private legal practitioners.

The means test considers the ability of the applicant to meet their legal costs. It is applied to the income and assets of:

- the applicant for legal aid, and
- any financially associated person.

A Financially Associated Person is a person who could reasonably be expected to contribute to the applicant's legal costs. The means test is not applied to the income and assets of a financially associated person where:

- it is considered that the income and/or assets of the financially associated person are not available for the use or benefit of the applicant
- the Financially Associated Person has a contrary interest in the matter
- disclosure of the legal problem may damage the relationship between the applicant and the financially associated person
- if the financially associated person is the spouse or de facto spouse of the applicant, the applicant and financially associated person are separated, or
- there are other special reasons why the financially associated person's means should be disregarded.

In order to satisfy the means test the applicant must satisfy two sub-tests, an income test, and an assets test.

Income test

Applicants who receive Centrelink payments

Centrelink payments at the maximum rate

An applicant receiving a Centrelink income support payment at the maximum rate satisfies the income test if:

- he or she has no financially associated person, or
- any financially associated person is also receiving a Centrelink income support payment at the maximum rate.

The Centrelink income support payments to which this policy applies are set out in the following table.

Centrelink income support payments	
ABSTUDY Scheme payments	Partner Allowance
Age Pension	Sickness Allowance
Austudy Payment	Special Benefit
Carer Payment	Wife Pension
Disability Support Pension	Widow Allowance
Mature Age Allowance	Widow B pension
Parenting Payment (single)	Youth Allowance
Farm Household Allowance	JobSeeker Allowance

Applicants must provide a current Centrelink Statement of Benefit which states that the applicant or financially associated person is currently entitled to a Centrelink benefit or pension payable at the maximum rate as evidence.

Centrelink recipients must also satisfy the assets test to be eligible to receive legal aid.

Partial Centrelink payments

If the applicant, a financially associated person, or both receive a partial Centrelink income support payment, the applicant must satisfy the standard income test (see below).

All other applicants

If the applicant's net assessable income is less than \$420 per week they will satisfy the income test. Net assessable income is the applicant's gross assessable income, less allowable deductions. That is:

$$\text{Gross assessable income} - \text{Allowable deductions} < \$420$$

Gross assessable income

Gross assessable income includes, but is not limited to, the following:

- pensions, benefits and allowances (except Family Tax Benefit Part A, Family Tax Benefit Part B, Carer Allowance and Rent Assistance, and NDIS amounts)
- net income (after tax) from wage/salary, or self-employment, including leave payments
- payments from investments, dividends, interest earned and debts owed to the applicant
- board or rent received
- spousal maintenance and child support received
- workers' compensation or other insurance payments
- superannuation payments

Evidence of income (e.g. Centrelink Income Statement, pay slips or bank statements) must be provided.

Allowable deductions

The following table sets out the allowable deductions in the income test.

Allowable deduction	Maximum weekly amount
Housing costs <i>Housing costs include rent, board, mortgage instalments and rates.</i>	\$300
Financially associated person allowance <i>Deducted for each financially associated person whose income is included in assessable income.</i>	\$200
Dependant allowance (per dependant) <i>A dependant allowance is to be deducted for all genuine dependants whether or not they reside with the applicant.</i>	\$120
Child support (maximum per child) <i>A deduction may be made for child support or child maintenance payments made for children who do not reside with the applicant.</i>	\$120
Childcare costs	\$325

Except for financially associated person allowance and dependant allowance, applicants may only deduct the amount they actually pay, up to the maximum set out above.

Evidence must be provided which shows the amount actually paid (e.g. rental agreements, rates notices, bank statements) for the deduction to be applied.

All applicants must also satisfy the assets test to be eligible for legal aid.

Assets test

If the applicant's net assessable assets, less any exempt assets, are worth less than \$1,500, they will satisfy the assets test. That is:

$$\text{Net assessable assets} - \text{Exempt assets} < \$1,500$$

Net assessable assets

For the purposes of the assets test, the assessable assets are all of the following asset types that the applicant or any financially associated person owns in full or part, or has an interest in:

- real estate and land
- personal property, including motor vehicles
- cash and lump sum payments
- shares, debentures and other investments

The net value of an assessable asset is the market value, less any debts held over the asset (e.g. a mortgage or car loan).

Exempt assets

The below table sets out the exempt assets. Where the value of any exempt asset exceeds the maximum allowable value, that amount is to be incorporated into the applicant's net assessable assets.

Exempt assets	Maximum allowable value
Home equity or equity in property (houses, land)	\$150,000
Motor vehicle equity	\$20,000
Cash and savings	\$3,500
Shares and investments	\$3,000
Lump sum compensation payments, if applicant is not working and precluded from receiving a pension or other government benefit	Reasonable value
Household furniture and effects	Reasonable value
Clothing	Reasonable value
Tools of trade	Reasonable value

Evidence to support assessment of the value of assets (e.g. mortgage and bank statements or car loan agreements) must be provided if requested.