

## 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<br><i>Housing costs include rent, board, mortgage instalments and rates.</i>  | \$300                 |
| Financially associated person allowance<br><i>Deducted for each financially associated person whose income is included in assessable income.</i>                            | \$200                 |
| Dependant allowance (per dependant)<br><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)<br><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.