

Tasmania Legal Aid

GUIDELINES FOR GRANTS

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Introduction

Tasmania Legal Aid's (TLA) Guidelines for granting legal aid have been consolidated and reorganised into a number of parts, to reflect the steps involved in the grants process.

After establishing that the TLA is the appropriate Commission to apply to, the means test determines financial eligibility for aid. Next, eligibility is assessed based on matter type in accordance with Commonwealth and State Government guidelines, which may also require an assessment of the merits of the case.

The balance of the guidelines covers administration of the grant and payment of fees to lawyers.

Steps for grants of Legal Aid

1. Are the proceedings in Tasmania? – see [Guidelines for Forum and Reciprocity](#)
2. Is the applicant financially eligible for aid? – see [Guidelines for Means Test](#)
3. Does the applicant's case meet matter type guidelines for granting aid? – see [Guidelines for Matter Types](#)
4. If applicable, does the applicant's case meet the relevant [Merits Test](#)? – see [Guidelines for Merits Test](#)
5. If the applicant is eligible for aid, what are the [Conditions](#) governing the grant of aid? – see [Guidelines for Conditions](#)
6. What [Contributions](#) to legal costs is payable by the legal aid recipient? – see [Guidelines for Contributions](#)
7. What are the [Costs Guidelines](#) for lawyers acting for legal aid recipients? – see [Guidelines for Costs](#)
8. What [Fees](#) are payable to the lawyer? – see [Guidelines for Fees](#)

Guideline 1 - Forum and Reciprocity

(1) The Forum Test

- (a) The Commission in whose State/Territory the action is to be heard shall determine whether or not assistance shall be granted. The test provides that an application for legal assistance must be made to Tasmania Legal Aid in the State/Territory in which the Court action will proceed.
- (b) Applicants subject to the Forum Test should be assessed against the eligibility thresholds applying in the State/Territory in which assistance is sought.

(2) The Reciprocity Agreement

- (a) Where the applicant for legal assistance is resident in a State/ Territory and the grant of assistance relates to an action to be taken outside that State/Territory, the Forum Test is to be applied and the question of assistance will be the sole responsibility of the Commission in the State/Territory in which the action is taken.
- (b) Where a grant of legal assistance has been made to a resident in a State/Territory and the proceedings are transferred to a court or tribunal of the equivalent jurisdiction outside that State/Territory the grant of assistance will continue to be the responsibility of that Commission which will manage the file and will be responsible for any interstate agent's fees incurred, provided the relevant means and merit tests of the Commission continue to be satisfied. Should the jurisdiction change, the applicant will be required to make a fresh application.
- (c) Where a person to whom legal assistance has been granted ceases to reside in a State/Territory but the proceedings have not been transferred, the grant of assistance will continue to be the responsibility of the Commission in the State/Territory in which the action is being taken. However, the quantum of the grant will be subject to review, particularly in regard to possible changes in the financial position of the grantee.
- (d) Where a person to whom legal assistance has been granted ceases to reside in a State/Territory and the proceedings are also transferred to a forum outside that State/Territory, the grant will be transferred to the Commission in the State/Territory to which the proceedings are transferred. However, the grant will be subject to review, particularly having regard to possible changes in the financial position of the grantee and the merits and guidelines test of the transferee Commission.
- (e) Where proceedings have been funded by one Commission and aid is transferred in accordance with [Guideline 1 - \(2\)\(d\)](#), the new Commission will, on satisfactory conclusion of the matter, collect from the legally assisted person on behalf of the initial Commission, that proportion of the costs and outlays to which the initial Commission may have been entitled.
- (f) Applicants seeking assistance from a new Commission pursuant to the Reciprocity Agreement should be assessed against the eligibility thresholds applying in the State/Territory in which assistance is sought.

Guideline 2 - Means Test

(1) Tasmanian Simplified Means Test

(a) What is the Means Test?

- (i) The simplified means test applies for legal aid applications lodged electronically. TLA means test helps to decide whether legal aid can be granted. When applying for a grant of aid, the means test reviews the applicant's gross household income and assets. The means test is regularly reviewed to keep it in line with cost of living increases.
- (ii) Apart from reviewing the applicant's gross income and assets, the means test also decides how much the applicant will contribute towards costs if they are successful in being granted aid.
- (iii) Depending on the means test results, the applicant will either be provided with legal aid with a nominal contribution (currently \$60) or they will be charged a higher contribution towards costs.

(b) Who Does the Means Test Apply To?

- (i) The means test applies to people needing a grant of aid for a legal matter or seeking legal advice at Legal Aid. For people whose income and assets are within the means test limits, a nominal contribution (currently \$60) is charged. For those outside the limits, a higher contribution is charged.
- (ii) Applicants whose sole source of income is a Centrelink Benefit are automatically deemed to be financially eligible for legal aid provided they are within the [Assets Test](#) guidelines.
- (iii) Children, that is, people who are under 18 years of age, are not subject to the means test.

(2) Income Test (Tasmanian Simplified Means Test)

(a) How does the Means Test Assess Income?

- (i) The means test is based on a formula which takes into account the number of people in the applicant's household who are dependent on the income, including maintenance dependants.
- (ii) Household members includes anyone who is financially related to the applicant. A person who has a financial relationship may be a relative, partner, spouse, corporation, trust or group from whom the applicant:
 - A. usually receives financial support; or
 - B. usually gives financial support; or
 - C. would be likely to receive financial help to obtain legal services.
- (iii) The income of any financially associated person must be declared as part of the total household gross weekly income.
- (iv) [Simplified Contributions Assessment Table 1](#) sets out the allowed gross weekly income limits for households of various sizes. Normally, aid is not granted where an applicant's income exceeds the maximum income threshold specified in the table. Applicants can use this table to check if they will meet the means test requirements or if they might have to make a contribution towards the costs of their grant.

(3) Assets Test (Tasmanian Simplified Means Test)**(a) How does the Means Test Review Assets?**

- (i) Assets include land, cash, shares, debentures or other forms of investment and the assets of any financially associated person unless the applicant needs legal aid because they are in dispute with that person.
- (ii) The applicant may be asked to pay an initial contribution if their assessed assets are greater than:
 - A. \$740 if you do not have a financial association with another person;
 - B. \$1,490 if you have a financial association with another person.

(b) Assets Not Included in the Test

- (i) The house the applicant lives in, land purchased on which the applicant is building a home, or cash saved for a home purchase (as long as the contracts for building or purchase have been entered into) unless the applicant's equity in the property is more than the allowable amount for the applicant's area in [Contributions : Benchmark Amounts - Housing](#);
- (ii) household furniture and effects unless of exceptional value;
- (iii) tools of the trade unless of exceptional value;
- (iv) the applicant's car or cars, unless they have more than \$11,500 equity in it; or
- (v) subject to specific guidelines in family law matters, the value of any property involved for which the applicant wants legal aid.

(c) Assessing assets if the applicant is a farmer or small business operator

- (i) If the applicant is a farmer or a small business operator, they are allowed equity in assets in the farm or business up to the limit set by the Department of Human Services from time to time.
- (ii) This means that the equity above the limits shown in paragraph 2.3.4 (in the farm or business) is assessed in the assets test.

(d) Equity in a farm or business using the DSS Assets Test categories

Single home owner	\$118,000
Single non-home owner	\$202,000
Married home owner	\$167,000
Married non-home owner	\$251,000
Total equity in motor vehicles	\$ 11,500

- (i) "Homeowner" refers to a person who owns or is paying off the house in which they live.

(4) National Means Test**(a) Introduction**

- (i) The means test sets out general principles and indicators for income testing and asset testing applicants for legal assistance. The test sets a standard for determining how much a person with any given income and assets can afford to pay for necessary legal services. It thereby assists in determining:
 - A. whether a person can afford the full cost of obtaining the required legal services from a private practitioner ("private legal costs") and should therefore be refused legal assistance;
 - or
 - B. if assistance is granted (the person being unable to pay full private legal costs), the amount that the person can afford to pay by way of a contribution.
- (ii) This test does not provide a system for assessment of costs recovered, which are assessed at the conclusion of an assisted matter. These are levied where the person's financial position has improved in the course of or as a result of the proceedings.

See [Costs Guidelines](#)

See [Contributions Guidelines](#)

See [Assessment of Final Contributions Guidelines](#)

- (iii) In addition to the Means Test, an application for assistance is also assessed as to the reasonableness of providing assistance (the [Merits Test](#)) and as to whether it meets the Commission's guidelines as to the types of matter for which assistance may be granted.
- (iv) The Commission expects the applicant to act in the manner of the ordinarily prudent self-funding litigant.

See [Merits Test](#)

(5) Income Test (National Means Test)**(a) The Income Test**

The income of an applicant is taken into account in determining whether or not assistance should be granted.

(b) Definition of Income

- (i) The income of an applicant for assistance is the weekly income from all sources including:
 - A. pensions, benefits and allowances;
 - B. income from paid work, including overtime;
 - C. commissions and allowances (eg car);
 - D. periodic receipts of a capital nature including payments from investments, interest earned and payments of debts owed to the applicant;
 - E. board or rent received;
 - F. maintenance received;
 - G. workers compensation or other insurance payments; and superannuation.
- (ii) Income does NOT include Basic Family Payment (as paid by the Department of Human Services) and is calculated net of business overheads/expenses reasonably incurred in or for the purposes of gaining or producing that income.
- (iii) Such overheads/expenses shall not be considered reasonably incurred merely because they have been, or are likely to be allowed or allowable deductions by the Commissioner of Taxation for the purposes of the [Income Tax Assessment Act 1997](#).
- (iv) In some commissions, income does not include rental relief.

(c) Assessable Income

The assessable income of the applicant is the income which is taken into consideration in determining whether legal assistance should be granted, and is the income which the applicant receives or of which the applicant has the benefit. "Benefit" may include housing costs, living expenses, car costs etc.

(d) Definition of Assessable Income

- (i) The assessable income of an applicant is the weekly income of the applicant and any financially associated person (less all allowable deductions), unless:
 - A. they are separated;
 - B. the financially associated person has a contrary interest in the matter for which legal assistance is sought;
 - C. disclosure of the legal problem may damage the relationship; or
 - D. there are other special reasons why the income of the financially associated person should be disregarded.
 - E. This is the net income for the purposes of the means test.

(e) Definition of Assessable Income of a Child

- (i) The assessable income of a child applicant is:
 - A. the income of that child where that child supports him or herself from that income; and/or
 - B. any government benefit received by that child in their own right; or
 - C. the income of the parent(s) or guardian(s) who supports the child unless:
 - I. a parent(s)/guardian(s) has a contrary interest in the matter; or
 - II. disclosure of the matter to the parent(s)/guardian(s) would damage the relationship; or

- III. the parent(s)/guardian(s) is genuinely unwilling or unable to assist the child in the matter,
- IV. due to policy or administrative reasons, the Commission decides not to assess the child's income.

(f) **Allowable deductions**

- (i) The following allowances should be deducted from the applicant's income:
 - A. income tax, including Medicare levy;
 - B. weekly housing costs, including rent, mortgage plus rates, or one half of board payments to a maximum as set out in [Income Test Benchmark Amounts - National Means Test](#);
 - C. childcare costs necessarily incurred to work or study by the applicant or other person whose income is included in the assessable income, to a maximum as set out in [Income Test Benchmark Amounts - National Means Test](#);
 - D. dependent allowance as set out in [Income Test Benchmark Amounts - National Means Test](#) a dependent allowance should be deducted for any dependent children and for a financially associated person; and
 - E. maintenance payments up to the amount of the appropriate dependent allowance as set out in [Income Test Benchmark Amounts - National Means Test](#).

(g) **Contribution on income**

Where an applicant's assessable income is greater than the amount set out in [Income Test Benchmark Amounts - National Means Test](#), legal assistance may be granted on the condition that the applicant pays a contribution. The amount of the contribution may vary depending on the level of the assessable income and the likely cost of the matter for which assistance is sought.

(h) **Refusal where initial contribution exceeds likely costs**

- (i) An applicant should be refused legal assistance where the contribution on income is greater than the Commission's estimate of the costs of paying for the services from a private lawyer.
- (ii) The Commission has discretion to grant assistance to an applicant who is not eligible on income in exceptional circumstances.
 - A. Exceptional circumstances may exist where:
 - I. there is not sufficient time for an applicant to raise the funds necessary to pay for a private lawyer; and/or
 - II. the applicant could not reasonably be expected to borrow money to do so.
 - B. The Commission will determine the person(s) or classes of person(s) in whom the discretion is vested.
 - C. Where assistance is granted in these circumstances the applicant will be required to pay a full contribution. Payment of such a contribution may be secured by an equitable charge over any property owned by the applicant.

See [Income Test Benchmarks - National Means Test](#)

(6) Income Test Benchmarks (National Means Test)**(a) Assessable Income Threshold**

The generic benchmark for the assessable income threshold (which establishes whether legal assistance will be granted through a Legal Aid Commission ("LAC"), sometimes without an initial contribution being imposed by certain LACs as provided for in their Guidelines) is the percentage of the [Henderson Poverty Line](#), as published by the Institute of Applied Economics and Social Research at the University of Melbourne, selected for use by each individual LAC from time to time, by reference to the "Head in Workforce, Other than Housing, Single Person" indicator as set out in [Table 1 of the Henderson Poverty Line Tables](#).

(b) Housing Costs

The generic benchmark for determining the maximum ceiling for allowable housing costs should be the percentage as determined by each LAC of the average rent of a 2 bedroom flat or a 3 bedroom house (depending upon what is appropriate having regard to the local rental market), with reference to local Real Estate Institutes or other authorities.

(c) Childcare Costs

The generic benchmark for determining the maximum deduction allowable for childcare should be a percentage of the figure for childcare relief as determined by the Department of Health and Community Services (Cth) ie a maximum of 50 hours per week, as selected for use by individual LACs from time to time.

(d) Dependent Allowance

- (i) The generic benchmark for determining the first dependent allowance is the selected percentage (as determined by individual LACs) of the Henderson Poverty Line figures of the difference between the "Head in Workforce, Cost other than Housing, Single Parent plus one" and "Head in Workforce, Cost other than Housing, Single Person", as set out in [Table 1 of the Henderson Poverty Line Tables](#).
- (ii) The benchmark for determining the second and subsequent dependent allowance is the selected percentage (as determined by individual LACs) of the Henderson Poverty Line figures of the difference between the "Head in Workforce, Cost other than Housing, Single Parent plus two" and "Head in Workforce, Cost other than Housing, Single Parent plus one", as set out in [Table 1 of the Henderson Poverty Line Tables](#).

(e) Maintenance Payments

The generic benchmark for determining the maximum allowable deduction for maintenance payments is the [Dependent Allowance](#).

(f) Board

- (i) The full amount of board received by an applicant is counted as income. A deduction is allowed by way of a dependent allowance to cover items which are paid out on behalf of the boarder by the applicant (eg food).
- (ii) Board paid by the applicant is allowed at half the amount paid up to the allowable housing costs ceiling. This reduction reflects that the applicant, as a boarder, will be provided with food, electricity, etc in addition to basic accommodation.

(g) Rent Relief

Rent relief received by an applicant from Commonwealth, State or Territory agencies/departments may be disregarded as income by individual LACs.

See [Income Test Benchmark Amounts - National Means Test](#)

(7) : Income Test Benchmark Amounts (National Means Test)

(7) Income Test Benchmark Amounts (National Means Test)

To be updated in January and July each year

Assessable Income Threshold	\$180
Housing Costs	\$120
Childcare Costs	\$115
Dependent Allowance	\$ 67
Maintenance Payments	\$ 67

See [Definitions for National Means Test](#)

(8) Definitions for National Means Test**(a) Allowable Assets**

- (i) The maximum level of assets an applicant may have (following allowable deductions) for an applicant to qualify for a grant of legal aid without an initial contribution on assets. The figures represent an estimate of the amount that an applicant may be expected to have on hand between periodic paydays, or set aside to pay rent or other regular outgoings.
- (ii) The maximum level of assets are set at \$740 for a single applicant and \$1,490 for an applicant with dependents.

(b) Allowable Equity in Housing

- (i) The allowable equity in housing includes equity in:
 - A. all types of housing occupied as the principal place of residence of an applicant;
 - B. housing in which the applicant resided immediately prior to separation; and
 - C. land on which the applicant is building a home in which they intend to live; up to a maximum ceiling fixed by reference to the appropriate benchmark.

(c) Assessable Assets

- (i) The assessable assets of an applicant are the assets of the applicant (apart from excluded assets) and any financially associated person, unless:
 - A. they are separated;
 - B. the financially associated person has a contrary interest in the matter for which legal assistance is sought;
 - C. disclosure of the legal problem may damage the relationship; or
 - D. there are other special reasons why the income of the financially associated person should be disregarded.
- (ii) The assessable assets of an applicant are assets in which the applicant or a financially associated person has a legal or equitable interest. "Asset" may include real estate or personal items not registered in an applicant's or financially associated person's name.

(d) Assessable Assets of a Child

- (i) The assessable assets of a child applicant:
 - A. the assets of that child where that child supports him or herself from an income and/or any government benefit received by that child in their own right; or
 - B. the assets of the parent(s) or guardian(s) who support(s) the child unless:
 - I. a parent(s)/guardian(s) has a contrary interest in the matter; or
 - II. disclosure of the matter to the parent(s)/guardian(s) would damage the relationship; or
 - III. the parent(s)/guardian(s) is genuinely unwilling or unable to assist the child in the matter unless, due to policy or administrative reasons, the LAC decides not to assess the child's assets.

(e) Assessable Income

- (i) The assessable income of an applicant is the income of the applicant and any financially associated person (less all allowable deductions), unless:
 - A. they are separated;
 - B. the financially associated person has a contrary interest in the matter for which legal assistance is sought;
 - C. disclosure of the legal problem may damage the relationship; or

- D. there are other special reasons why the income of the financially associated person should be disregarded.
- (ii) Assessable income is the income which the applicant or a financially associated person receives or of which the applicant or the financially associated person has the benefit. "Benefit" may include housing costs, living expenses, car costs, etc.
- (f) **Assessable Income of a Child**
- (i) The assessable income of a child applicant is:
- A. the income of that child where that child supports him or herself from that income; and/or
- B. any government benefit received by that child in their own right; or
- C. the income of the parent(s) or guardian(s) who support(s) the child unless:
- I. a parent(s)/guardian(s) has a contrary interest in the matter; or
- II. disclosure of the matter to the parent(s)/guardian(s) would damage the relationship; or
- III. the parent(s)/guardian(s) is genuinely unwilling or unable to assist the child in the matter,
- unless, due to policy or administrative reasons, the LAC decides not to assess the child's income.
- (g) **Asset in Dispute**
- (i) An asset in dispute is one of the following:
- A. an asset the actual ownership of which is the issue for which legal assistance is sought; or
- B. an asset which the applicant, or a financially associated person asserts he/she is not the owner of (which has been disclosed in the application) and which would ordinarily be taken into account in any means test assessment.
- (ii) It does not include assets in matrimonial property disputes where the legal issue is proportionate distribution rather than actual ownership.
- (h) **Child**
- A person under the age of 18 years.
- (i) **Childcare Costs**
- Childcare costs are those necessarily incurred by the applicant or financial associated person to work or study.
- (j) **Clothing**
- Normal clothing which is reasonably required by the applicant and dependants.
- (k) **Compulsory Payment**
- Compulsory payments include approval fees, compulsory initial contributions and other initial payments which all eligible applicants are required to pay irrespective of whether their assessable income and assets are below the eligibility thresholds.
- (l) **Consumer Debt**
- (i) Debt incurred in relation to:
- A. household goods;
- B. motor vehicles; or
- C. repairs
- which are owed:

- D. to finance companies;
 - E. on credit cards; or
 - F. to other high interest lenders; or
 - G. by way of personal loan or consumer mortgage,
- (ii) whether the debt was incurred by the applicant, or the applicant has been left with a debt for which another person was to be solely or jointly responsible.
- (m) **Contributions**
Amounts of money which are payable, upon legal assistance being granted, toward the cost of legal services provided. Such payments are calculated through assessment under the National Means Test and the estimated cost of providing legal services.
- (n) **Corporations**
A group of people authorised to act as an individual and recognised in law as a single entity.
- (o) **Dependent**
A dependent child or financially associated person.
- (p) **Discretions**
Powers to waive certain core eligibility criteria in specified circumstances which are vested by individual LACs.
- (q) **Equitable Charge**
Any mortgage, statutory charge, caveat or other legal instrument used to secure a financial interest over the property of an applicant.
- (r) **Farm/Business Equity**
Equity in a farm or business vested in the applicant or a financially associated person up to a maximum ceiling. Where a single farm comprises several different titles it should be regarded as a single property for the purposes of the National Means Test.
- (s) **Financially Associated Person**
- (i) A financially associated person may include any person:
 - A. from whom the applicant usually receives financial support; or
 - B. to whom the applicant usually provides financial support; or
 - C. who could reasonably be expected to financially assist the applicant in obtaining legal services.
 - (ii) "Person" may include a relative, partner, spouse, corporation, trust, group etc.
- (t) **Forum Test**
The agency in whose State/Territory the action is to be heard shall determine whether or not assistance shall be granted. The test provides that an application for legal assistance must be made to the LAC in the State/Territory in which the Court action will proceed.
- (u) **General Discretion**
- (i) This is a general discretion to grant legal assistance to an otherwise ineligible applicant in exceptional circumstances, having regard to any other matter affecting the ability of a person to meet the cost of obtaining the legal services from a private legal practitioner without undue hardship.
 - (ii) Individual commissions will determine where, if at all, the discretion is vested.

(v) **Generic Benchmark**

A standard measurement expressed in descriptive terms which identifies its elements. A monetary amount can then be assigned to the benchmark by reference to the description.

(w) **Henderson Poverty Line**

The *Henderson Poverty Line* as published by the Institute of Applied Economic and Social Research of the University of Melbourne on a quarterly basis.

(x) **Home Equity**

(i) Equity in housing in which the applicant normally lives. This includes:

- A. housing in the form of a house, flat, unit, caravan, boat or any other abode occupied by the applicant as their place of residence; or
- B. land on which the applicant is currently building a home or has recently completed building a home in which they intend to live.

(y) **Household Furniture and Effects**

- (i) Normal household furniture and effects reasonably required by the applicant and dependants.
- (ii) In practice, legal aid bodies rarely find themselves in the position of considering what household property should be asset tested. It is generally only where the total value of household effects or particular items is unusually high, or where assistance is sought to resolve a dispute concerning those items, that attention is directed to the question.

(z) **Housing**

Any type of accommodation in which a person lives including a house, flat, hostel, hotel, caravan, boat, etc.

(aa) **Housing Costs**

The cost of housing including rent, mortgage, rates or one half of board payments up to a combined maximum as set out in *Income Test Benchmark Amounts - National Means Test*.

(bb) **Income**

(i) Income is income from all sources including:

- A. pensions, benefits and allowances;
- B. income from paid work, including overtime;
- C. commissions and allowances (eg car);
- D. periodic receipts of a capital nature including payments from investments, interest earned and payments of debts owed to the applicant;
- E. board or rent received;
- F. maintenance received;
- G. workers compensation or other insurance payments; and
- H. superannuation.

(ii) Income does NOT include Basic Family Payment (as paid by the Department of Human Services) and is calculated net of business overheads/expenses reasonably incurred in or for the purposes of gaining or producing that income.

(iii) Such overheads/expenses shall not be considered reasonably incurred merely because they have been, or are likely to be allowed or allowable deductions by the Commissioner of Taxation for the purposes of the *Income Tax Assessment Act 1997*.

(iv) In some LACs income does not include rental assistance.

(cc) Income Tax

Income tax includes the Medicare levy.

(dd) Maintenance Payments

Payments made in respect of a child or children who do not live with the applicant.

(ee) Male Average Weekly Earnings

The level of income a person having lump sum compensation payments on hand is deemed to have during any Department of Human Services preclusion period. The indicator used is Average Weekly Earnings of Employees (Male, full-time, average weekly ordinary time earnings) as released quarterly by the Australian Bureau of Statistics.

(ff) Motor Vehicle Equity

- (i) The asset value is based on a 5 year old "family" car. The figure used is taken from the *'Red Book'* and will usually be a six cylinder Australian made car (eg Holden, Falcon).
- (ii) A maximum of two (2) motor vehicles will be accepted under the Assets Test (without assessment for Assets contribution) provided:
 - A. the vehicles belong to a household of two or more persons whose combined means are assessable under the particular application for legal aid at hand, and
 - B. the combined equities in the two vehicles do not exceed the current allowance benchmark. See [Contributions - Benchmark Amounts](#)

(gg) Person

A person may include a relative, partner, spouse, trust corporation or group.

(hh) Principal Residence

The place at which the applicant normally lives.

(ii) Representative Proceedings

- (i) The term 'representative' is used here in its strict sense to refer to matters where the applicant for assistance brings proceedings as representative for a group of persons, all of whom are named in the initiating process.
- (ii) In cases where the applicant seeks assistance for a test case, the outcome of which may indirectly benefit others by clarifying the law or establishing a remedy, the Means Test can only be applied to the applicant. However, Guidelines on other sources of support may be relevant if the individuals who stand to benefit can afford to collectively fund a test case and would be likely to do so if assistance were not available.

(jj) Tools of Trade

The tools normally and reasonably used to earn income by the applicant or financially associated person.

(kk) Trusts

Formal financial arrangements whereby one person holds assets for the benefit of another person which may be distributed or released by the person holding the assets.

(ll) Updating of Benchmark Amounts

All benchmark amounts will be updated every six months, that is in January and July of each year, using (amongst other figures) [Henderson Poverty Line](#) figures released in the previous December and June in relation to the previous September and March quarters. Adoption of the updated figures will be determined by individual LACs.

(mm) **Verification of Means**

Documentation of income and assets in the form of pay slips, statements and other specific documentation as set out in the *National Means Test*.

(9) Assets Test (National Means Test)**(a) The Assets Test**

The assets of the applicant are also taken into account in determining whether or not legal assistance should be granted.

(b) Assessable Assets

- (i) The assessable assets of an applicant are the total assets of the applicant and any financially associated person (less excluded assets), unless:
 - A. they are separated;
 - B. the financially associated person has a contrary interest in the matter;
 - C. disclosure of the legal problem would damage the relationship; or
 - D. there are other special reasons why the financially associated person's assets should be disregarded.
- (ii) Assessable assets are assets in which the applicant has a legal or equitable interest. "Asset" may include real estate or personal items not registered in an applicant's name.

(c) Assessable Assets of a Child

- (i) The assessable assets of a child applicant are:
 - A. the assets of that child where that child supports him or herself from an income and/or government benefit received by that child in their own right; or
 - B. the assets of the parent(s) or guardian(s) who supports the child unless:
 - I. the parent(s)/guardian(s) has a contrary interest in the matter;
 - II. disclosure of the matter to the parent(s)/guardian(s) would damage the relationship;
 - III. the parent(s)/guardian(s) is genuinely unwilling or unable to assist the child in the matter; or
 - IV. due to policy or administrative reasons, the Commission decides not to assess the child's assets.

(d) Excluded Assets

- (i) The following assets should be excluded from the applicant's assessable assets:
 - A. household furniture and effects which are reasonably necessary;
 - B. clothing;
 - C. equity in tools of trade, unless they are of exceptional value;
 - D. equity in up to two motor vehicles, where those vehicles belong to a household of two or more persons whose combined incomes are assessable for the purposes of the application for assistance, where the combined total equity does not exceed the maximum set out in [Assets Test Benchmark Amounts - National Means Test](#).
 - E. the equity in the principle place of residence which includes a dwelling, caravan, or any other accommodation in which the applicant normally resides or land on which the applicant is actually currently building a home or has recently completed building a home in which he/she intends to reside, up to the maximum set out in [Assets Test Benchmark Amounts - National Means Test](#);
 - F. the equity in a farm or business which provides the applicant's main source of income up to the maximum set out in [Assets Test Benchmark Amounts - National Means Test](#);

- G. lump sum compensation or other payments in hand (eg superannuation upon retrenchment or resignation) where neither the applicant or their dependants are working and where the person to whom the compensation was paid is not entitled to receive any benefit or pension under *Part 17 of the Social Security Act 1991*. In these cases the applicant will be deemed to have a gross weekly income equal to male average weekly earnings as set out in *Assets Test Benchmark Amounts - National Means Test* for the period during which the applicant is not entitled to any benefit or pension; and
- H. lump sum child or spouse maintenance in hand where the applicant is receiving a pension or benefit at a reduced rate under the maintenance income test. NOTE: Where the lump sum payment does not prevent the applicant from drawing a Centrelink benefit, it should be assessed as an asset.

(e) **Sale of Excluded Assets**

Where it appears reasonably likely that an excluded asset will be sold during the course of the matter and that the applicant will receive sufficient funds to pay privately for the required legal services, assistance may be refused.

(f) **Discretion to Disregard Home Equity of Aged Applicants**

- (i) Where an applicant is ineligible for assistance due to excess equity in accommodation and:
 - A. is aged over 60 years; and
 - B. is in receipt of an income tested pension or benefit; and
 - C. has lived in his/her home for 5 years or more unless it has been necessary to buy alternative accommodation by reason of disability or ill health,
 the Commission has discretion to grant assistance.
- (ii) The Commission will determine the person(s) or classes of person(s) in which the discretion is vested.
- (iii) Where assistance is granted in these circumstances, the applicant will be required to pay a full contribution. Payment of such a contribution may be secured by an equitable charge over any property owned by the applicant.

(g) **Assets for Which Ownership is in Dispute**

- (i) An asset, the actual ownership of which is the issue for which legal assistance is sought, should be an excluded asset until ownership is clarified. If ultimately the applicant's ownership is determined, a contribution should be imposed having regard to the value of the asset and the cost of the legal assistance provided. This does not include assets in matrimonial property disputes where the legal issue is proportionate distribution rather than actual ownership.
- (ii) An asset apparently owned by the applicant, or a financially associated person whose assets are assessable, which is not the subject of the matter for which legal assistance is sought should be regarded as the applicant's asset and included in any means test assessment unless the applicant or financially associated person satisfies the Commission that he/she is not the owner of the asset.

(h) **Debts**

Debts are not allowed as a set off against assets unless they are secured against specific assets by a registered instrument.

(i) **Assets Allowance**

Without taking into account excluded assets, an applicant may have assets up to the maximum value set out in *Assets Test Benchmark Amounts - National Means Test* and still be eligible for legal assistance provided the income test is also satisfied.

(j) **Contributions on Assets**

Where the value of an applicant's assets is greater than the amount set out in *Assets Test Benchmark*

Amounts - National Means Test, legal assistance may be granted on the condition that the applicant pays a contribution. The amount of the contribution may vary depending on the value of the assets and the likely cost of the matter for which assistance is sought.

(k) **Refusal Where Initial Contribution Exceeds Likely Costs**

- (i) An applicant should be refused legal assistance where the contribution on assets is greater than the Commission's estimate of the costs of paying for the services from a private lawyer.
- (ii) The Commission has discretion to grant assistance to an applicant who is not eligible on assets in exceptional circumstances.
- (iii) Exceptional circumstances may exist where:
 - A. there is not sufficient time for an applicant to raise the funds necessary to pay for a private lawyer; and/or
 - B. the applicant could not reasonably be expected to borrow money to do so.
- (iv) The Commission will determine the person(s) or classes of person(s) in whom the discretion is vested. Where assistance is granted in these circumstances the applicant will be required to pay a full contribution. Payment of such a contribution may be secured by an equitable charge over any property owned by the applicant.

See [Assets Test Benchmarks](#)

(10) Assets Test Benchmarks (National Means Test)**(a) Equity in Housing/Principal Home**

The maximum ceiling should be fixed by individual LACs for the allowable equity in housing using the median price of an established home as the generic benchmark, with reference to local Real Estate Institutes or authorities.

(b) Equity in a Farm or Business

(i) The generic benchmark for equity in a farm or business should be the assets test used by the Department of Human Services in the assessment of eligibility for a full benefit or allowance. This should be broken down into the following categories:

- A. Where an applicant owns a farm in their sole name, after deduction of the value of the home and surrounding five (5) acres of land, the assets test would include the value of the remaining land and other assets, up to the limit as determined by the Department of Human Services from time to time.
- B. Where an applicant owns a farm in joint names with another person or could be expected to gain an equitable interest in the farm under State/Territory or Commonwealth legislation, after deduction of the value of the home and surrounding five (5) acres of land, the assets test would include the value of the remaining land and other assets, up to the limit as determined by the Department of Human Services from time to time.

(c) Equity in Motor Vehicles

The generic benchmark for total maximum motor vehicle equity is the average price of a 5 year old 6-cylinder family car in each State/Territory, with reference to the local accredited automobile association.

(d) Allowable Assets

- (i) The original benchmark figures for allowable assets in 1988 were \$500 for a single person and \$1000 for a person with dependants. The formula for updating this figure is the weighted average of the [Consumer Price Index/Average Weekly Earnings](#) in accordance with the Commission Funding Agreements. As at 1 January 1995, the figures should be \$740 for a single applicant and \$1,490 for an applicant with dependants.
- (ii) These figures have been updated since 1988 by reference to the [weighted average of national CPI](#) and [AWE indicators](#).

See [Assets Test Benchmark Amounts \(National Means Test\)](#)

(11) : Assets Test Benchmark Amounts (National Means Test)

To be updated in January and July each year

(a) **Equity in Housing/Principal Home**

Region A (South) amount	\$215,750
Region B (North) amount	\$167,500
Region C (North West) amount	\$169,000

(The schedule may provide for different amounts for different regions within a State/Territory if considered appropriate.)

(b) **Equity in a Farm or Business (using the DSS Assets Test categories)**

Single home owner	\$118,000
Single non-home owner	\$202,000
Married home owner	\$167,000
Married non-home owner	\$251,000

(c) **Total Equity in Motor Vehicles** \$ 11,500(d) **Allowable Assets**

Single applicant	\$ 740
Applicant with dependants	\$ 1,490

(e) **Average Yearly Earnings** \$ 34,549

See [Definitions for National Means Test](#)

(12) Who Qualifies (National Means Test)**(a) Who Qualifies For Assistance**

- (i) Combination of the income and assets tests
 - A. An applicant will qualify for legal assistance where they satisfy both the income and assets tests.
 - B. Where the assessable income or assets or both exceed the maximum amounts set out in *Income Test Benchmark Amounts - National Means Test* or *Assets Test Benchmark Amounts - National Means Test*, assistance may be granted on the condition that the applicant pays a contribution. The amount of the contribution will be calculated on the basis of the likely cost of the matter for which assistance is sought.
- (ii) Refusal where initial contribution exceeds likely costs
 - A. An applicant should be refused legal assistance where the contribution on the combination of the income and assets tests is greater than the Commission's estimate of the costs of paying for the services from a private lawyer.
 - B. The Commission has discretion to grant assistance to an applicant who is not eligible in exceptional circumstances.
 - C. Exceptional circumstances may exist where:
 - I. there is not sufficient time for an applicant to raise the funds necessary to pay for a private lawyer; and/or
 - II. the applicant could not reasonably be expected to borrow money to do so.
 - D. The Commission will determine the person(s) or classes of person(s) in whom the discretion is vested.
 - E. Where assistance is granted in these circumstances the applicant will be required to pay a full contribution. Payment of such a contribution may be secured by an equitable charge over any property owned by the applicant.

(b) Ability to borrow

Where an applicant who is otherwise eligible for assistance can reasonably be expected to raise the necessary funds from private sources or lending institutions or to obtain the services on credit, assistance should be refused.

(c) Other sources of support

In assessing the applicant's means the Commission may take into account any financial support actually provided to the applicant or financially associated person by any other person or association including any support which would be likely to be provided upon request eg from trust funds.

(d) Discretionary trusts

- (i) The Commission will consider the trust structure and if it finds that:
 - A. the trust is not genuine such that the applicant or financially associated person retains effective control; or
 - B. the trustee is providing financial support to the applicant or financially associated person or will probably provide it upon request;

the assets of the trust will be assessed in accordance with the criteria of the means test.
- (ii) The Commission may determine these factors by examining:
 - A. the legal framework of the trust;
 - B. who has the power to appoint and remove trustees and beneficiaries;
 - C. the history of transactions such as previous distributions;
 - D. any changes in the trustees;

- E. any changes in the class of beneficiaries; and
 - F. the source of any income received by the trust.
 - (iii) Where there is no direct evidence that the applicant or a financially associated person is receiving financial support from the trust, but enjoys a standard of living higher than his/her own means should allow, the receipt of support from the trust may be inferred.
- (e) **Lifestyle guideline**
- Where available information suggests that an applicant's lifestyle, activities or interests are such that in the opinion of the Commission the applicant should have, or have access to, sufficient means to be able to afford to pay for the services of a private practitioner without undue hardship, the application should be refused.
- (f) **Corporations, associations and groups**
- (i) Where legislation or guidelines permit a Commission to grant assistance to corporations, associations or groups, the following means test applies:
 - A. Where the applicant seeking legal aid is a group then the means to be considered are the means of the group.
 - B. In considering the means of the applicant/group, regard should be had to the financial support that would be available from those members of the community who would be likely to support the aims of the group in the matter for which assistance is sought.
 - C. In considering the means of the applicant/group, regard should also be had to the group's ability to afford the cost of the legal proceedings having regard to his/her assets or the general assets of the group.

(13) : General Discretion (National Means Test)

(13) General Discretion (National Means Test)

- (a) The Commission has a general discretion to grant assistance to otherwise ineligible applicants in exceptional circumstances having regard to any other matter affecting the ability of a person to meet the cost of obtaining the legal services from a private legal practitioner without undue hardship.
- (b) The Commission will determine the person(s) or classes of person(s) in whom the discretion is vested.

(14) Verification Requirements (National Means Test)

- (a) **Verification should be provided by applicants in relation to the following:**
 - (i) in the case of an employed applicant, recent pay slips or a letter from the applicant's employer;
 - (ii) in the case of a self-employed applicant, the most recent tax return and balance sheets;
 - (iii) in the case of an applicant on a pension or benefit, a pension card or form from the Department of Human Services to indicate that the applicant has recently been approved for receipt of a benefit or pension;
 - (iv) statements for accounts held with banks and/or any other financial institutions for the previous 3 months. However, in criminal matters, the Commission will accept a current account balance print out from an Automatic Teller Machine, but reserves the right to seek further information;
 - (v) documentation in relation to any investments held by the applicant; and
 - (vi) documentation in relation to any other non-liquid assets where, in the opinion of the Commission, this is appropriate.
 - (vii) Where the assessable income and assets of an applicant include those of a financially associated person, verification of the income and assets of that person should also be provided.

(15) Treatment of COVID-19 financial assistance

Temporary additional government income and financial support has been made available in response to the effect of Coronavirus containment measures. This financial assistance may affect a person's eligibility for a grant of legal aid. Applicants prior to receiving the additional income support who would have received legal aid, may no longer be eligible, whilst others who were previously ineligible for legal aid may now be eligible.

(a) In determining applications for legal aid:

- (i) A person whose sole source of income are Centrelink benefits or payments, exception for applicants in receipt of the JobKeeper payment will continue to be deemed to meet the income test pursuant to Guideline [2\(1\)\(b\)\(ii\)](#);
- (ii) the JobKeeper payment will be regarded as income as set out in Guideline [2\(5\)\(b\)\(i\)B](#) - Definition of income, 'income from paid work...';
- (iii) the Coronavirus Economic Support Payment and other Coronavirus related lump sum payments, including early release of superannuation and loan assistance payments arising as part of the Coronavirus stimulus response, may be disregarded in the calculation of the applicant's income or assets.

(b) The Commission may disregard some income, including JobKeeper payment, or assets received as part of the Coronavirus financial stimulus response where the applicant:

- (i) has experienced a change in income or financial position as a result of coronavirus responses and/or coronavirus financial stimulus measures;
- (ii) has lost their income and/or has had to close their business as a result of the Coronavirus;
- (iii) is committed to higher living expenses as a result of their previous income and are using savings and/or superannuation to supplement those living expenses;
- (iv) has business overheads that need to be met despite the business generating little or no income; and the inclusion of the income or assets may unfairly disadvantage the applicant.

(16) Treatment of payments under the National Redress Scheme

- (a) The National Redress Scheme (NRS) was established in 2018 following the Royal Commission into Institutional Responses to Child Sexual Abuse. The purpose of the NRS is to recognise and alleviate the impact of past institutional child sexual abuse.
- (b) In determining applications for aid, payments made under the NRS may be disregarded in the calculation of the applicant's income or assets.

(17) Treatment of payments under the Territories Stolen Generation Redress Scheme

- (a) The Territories Stolen Generation Redress Scheme (TSGRS) was established in 2022 and offers financial and wellbeing support to some Stolen Generations survivors who were removed as children from their families or communities in the Australian Capital Territory, the Northern Territory and Jervis Bay Territory (the Territories).
- (b) In determining applications for aid payments made under the TSGRS may be disregarded in the calculation of the applicant's income or assets.

Guideline 3 - Merits Test

(1) Commonwealth Merits Test

See [Commonwealth Law Merits Test](#)

(2) State Merits Test

In addition to assessing whether or not an applicant for assistance can afford to pay for the necessary services by application of the means test, the TLA is required to review the merits of each applicant's case in order to decide if it is reasonable in all the circumstances to provide legal assistance.

Subject to the exercise of the merit test, the TLA may provide assistance in matters listed in these guidelines in accordance with priorities set by the TLA.

The Merit Test, in deciding whether it is reasonable in all the circumstances to grant aid, takes into account:

- the nature and extent of any benefit that an applicant may gain if aid is approved, or any detriment an applicant may suffer if aid is refused;
- whether the applicant has reasonable prospects of success in the proceedings;
- that an "ordinarily prudent self-funding litigant" would also risk funds in the proposed proceedings; and
- that it is appropriate to spend limited public funds on the matter in terms of the likely benefit to the applicant, or in some circumstances to the community.

Guideline 4 - Commonwealth Law Matters

(1) Priority Clients

Schedule B of the National Partnership Agreement on Legal Assistance Services 2015-2020, Commonwealth Priorities and Eligibility Principles

1. The legal assistance priority client groups recognise people whose capability to resolve legal problems may be compromised by circumstances of vulnerability and/or disadvantage. People who fall within the priority client groups are more likely to experience legal problems, less likely to seek assistance and/or less able to access services for a range of reasons.
2. Legal assistance service providers should focus their services on people experiencing financial disadvantage.
3. Where appropriate, legal assistance service providers should also plan and target their services to people who fall within one or more of the priority client groups (in alphabetical order):
 - (a) children and young people (up to 24 years);
 - (b) Indigenous Australians;
 - (c) older people (aged over 65 years);
 - (d) people experiencing, or at risk of, family violence;
 - (e) people experiencing, or at risk of, homelessness;
 - (f) people in custody and prisoners;
 - (g) people residing in rural or remote areas;
 - (h) people who are culturally and linguistically diverse;
 - (i) people with a disability or mental illness;
 - (j) people with low education levels; and
 - (k) single parents.
4. The list of priority client groups is for guidance only and is not exhaustive. Service providers are not excluded from assisting clients that fall outside these groups.

(2) Commonwealth Service Priorities

The use of Commonwealth funding provided under this Agreement by legal aid commissions and community legal centres should be broadly consistent with the principles and service priorities set out in this Schedule, where applicable.

(a) General Principles

- (i) Commonwealth funding should be directed to the delivery of front-line services and focused on meeting the legal needs of priority clients.
- (ii) Commonwealth funding should not be used to lobby governments or to engage in public campaigns. Lobbying does not include community legal education or where a legal assistance service provider makes a submission to a government or parliamentary body to provide factual information and/or advice with a focus on systemic issues affecting access to justice.
- (iii) Legal assistance service providers should deliver timely intervention services to resolve clients' legal problems sooner, or prevent them from arising altogether.
- (iv) Family or civil law disputes should be resolved through alternative dispute resolution processes rather than through litigation, where appropriate.
- (v) Legal assistance service providers should consider whether other services (legal as well as non-legal) may be relevant to a client's needs and make referrals to these services where appropriate. Suitable collaborative arrangements should be established for this purpose.

(b) Family Law Priorities

- (i) Legal Aid Commissions should focus on:
 - A. the representation of children in family law proceedings; and
 - B. family dispute resolution processes.
- (ii) In addition, Family law services should also focus on:
 - A. matters involving allegations of family violence;
 - B. matters where the safety or welfare of children are at risk; and
 - C. matters involving complex issues about the living arrangements of, and relationships with, children.

(c) Civil Law Priorities

- (i) Legal assistance service providers should focus on assisting people with civil law problems that are likely to have a significant adverse impact if not resolved. For example, where there are implications for a person's safety, health and wellbeing, access to government benefits and pensions, or homelessness status.
- (ii) Key Commonwealth civil law areas are listed below (in alphabetical order):
 - A. bankruptcy matters;
 - B. consumer law matters;
 - C. employment matters;
 - D. extradition matters;
 - E. human rights and anti-discrimination matters;
 - F. insurance law matters;
 - G. migration matters; and
 - H. social security law matters (including matters relating to military entitlements and military compensation claims).
- (iii) The list of Commonwealth civil law areas is for guidance only. Legal assistance service providers should consider how to best meet civil law need collectively (arising from Commonwealth or State

laws), within available resources.

- (iv) Legal assistance service providers should respond collectively to emerging civil law issues identified through service planning, such as providing legal help for victims of natural disasters.

(d) **Commonwealth Criminal Law Priorities**

- (i) Commonwealth criminal law services should focus on:
 - A. matters where the defendant is a child;
 - B. matters where the defendant is being charged with a criminal offence for which a sentence of imprisonment is likely to apply should the defendant be found guilty; and
 - C. assisting persons being detained in custody.

(3) General Information**(a) Basis of determination of grant of legal assistance**

- (i) The Commission may make a grant of legal assistance for an application for assistance that:
 - A. is for assistance for a Commonwealth Law Matter;
 - B. is within a Commonwealth Legal Aid Service Priority;
 - C. meets any guidelines set out in these Commonwealth Legal Aid Guidelines that are relevant to the application;
 - D. meets the Means Test (unless otherwise specified in these Guidelines); and
 - E. meets the Merits Test (unless otherwise specified in these Guidelines).
- (ii) When determining whether a grant of legal assistance is to be made, the Commission should apply paragraphs [Guideline 4 - \(3\)\(a\)\(i\)A](#), [\(i\)B](#), [\(i\)C](#), [\(i\)D](#) and [\(i\)E](#) in that order.
- (iii) If an application for a grant of legal assistance meets the criteria in this [Guideline 4 - \(3\)](#), the Commission must determine, in accordance with these Guidelines and after giving consideration to available Commonwealth Legal Aid Monies and competing Commonwealth Legal Aid Priorities, whether a grant is to be made and, if so, the nature and extent of that grant.
- (iv) If, apart from this [Guideline 4 - \(3\)](#), there is no guideline relating specifically to a Commonwealth Legal Aid Priority, the Commission may make a grant of legal assistance in the manner, and to the extent, it considers appropriate in that priority area.

(b) The Means Test

The means test to be applied by the Commission is the means test used by the Commission, at the date of the relevant application for assistance, for applications for assistance in State or Territory law matters.

(c) The Merits Test

- (i) To satisfy the merits test, the applicant for assistance must meet each of the following 3 tests:
 - A. the [reasonable prospects of success test](#);
 - B. the [prudent self-funding litigant test](#); and
 - C. the [appropriateness of spending limited public legal aid funds](#).
- (ii) The ***reasonable prospects of success test*** is met only if, on the information provided to the Commission it appears to the Commission that, on the legal and factual merits, the proposed action, application, defence or response for which a grant of legal assistance is sought is more likely than not to succeed.
- (iii) The ***prudent self-funding litigant test*** is met only if the Commission considers that a prudent self-funding litigant would risk his or her own financial resources in funding the proposed action, application, defence or response for which a grant of legal assistance is sought.

Note: Legal aid is a benefit funded by Australian taxpayers. Many taxpayers who are above the means test threshold for the granting of legal assistance have their own access to justice constrained in whole or in part because of limited financial resources. To reduce the inequity between those who have access to assistance and those who are marginally excluded, the Commonwealth aims to have strategies adopted that will provide solutions to assisted clients' problems at minimum cost. The test of the 'prudent self-funding litigant', one without 'deep pockets', is one such strategy. It aims to put assisted litigants into an equal but not better position than private litigants without 'deep pockets' who risk their own funds.

- (iv) The ***appropriateness of spending limited public legal aid funds*** test is met only if the Commission considers that the costs involved in providing the assistance are warranted by the likely benefit to the applicant or, in appropriate circumstances, the community.

Note: The Commonwealth has numerous competing interests for its legal aid resources, and accordingly requires the Commission to be satisfied that the matter for which legal assistance is sought is an appropriate expenditure of Commonwealth legal aid program resources. Examples

of what the Commonwealth considers to be inappropriate expenditures of Commonwealth legal aid resources are:

- A. applications to the court to dispense with a spouse's consent to a passport so that the applicant and child can travel overseas (as the Commonwealth considers that the contingent documentary costs of overseas travel should form part of the overall expense of the trip); and
 - B. some aspects of family law contact and property disputes, where the issue appears to be of minor significance in relationship to the legal costs that will be incurred in providing the legal assistance, for example, in a contact dispute, where the issue in dispute is who will pay for the child's bus or taxi fare, or who washes the child's clothes, or who provides the child's morning or afternoon tea.
- (v) The merits test is to be applied to all applications for a grant of legal assistance, unless otherwise specified in these Guidelines.

(d) **Test cases**

In considering whether to make a grant of legal assistance, the Commission may take into account whether funding is available from another Commonwealth scheme such as the [Commonwealth Public Interest and Test Cases Scheme](#).

(4) Family Law Matters

For the family law priorities see [Schedule B of the National Partnership Agreement 2015-2020, the Commonwealth Legal Aid Service Priorities, Family Law Priorities](#)

(a) Priority for Urgent Matters

- (i) Although each of the family law priorities in the [Commonwealth Legal Aid Service Priorities](#) are generally of equal priority, in deciding whether to make a grant of legal assistance for a family law for an interim order or injunction, the Commission will give the highest priority to urgent matters.
- (ii) Urgent matters are matters in which the Commission determines that:
 - A. a child's safety or welfare is at risk;
 - B. the applicant's safety is at risk;
 - C. there is an immediate risk of removal of a child from Australia or to a remote geographic region within Australia;
 - D. other exceptional circumstances exist that require urgent legal assistance.

(b) Non-urgent matters

- (i) If the Commission determines that a family law matter that falls within the family law priorities is not urgent, a grant of legal assistance should not be granted until the relevant parties have been separated for a sufficient period of time to enable them to be sure that there are real issues in dispute.
- (ii) [Guideline 4 - \(4\)\(b\)\(i\)](#) does not apply where the Commission considers that a non-urgent matter warrants a grant of legal assistance for an application to the court for an interim order or injunction prior to the passing of the sufficient period of time referred to in [Guideline 4 - \(4\)\(b\)\(i\)](#).
- (iii) In prioritising funds available for non-urgent matters and deciding whether a grant of legal assistance is to be made and, if so, the nature and extent of that grant, the Commission may take into consideration whether:
 - A. there is, or is a likelihood of, domestic violence, especially if an allegation of domestic violence has been made;
 - B. concerns as to the safety, welfare and psychological wellbeing of a child have been identified and require further investigation;
 - C. the applicant has a language or literacy problem;
 - D. the applicant has an intellectual, psychiatric or physical disability;
 - E. it is difficult for the applicant to obtain legal assistance because the applicant lives in a remote location; or
 - F. the child/ren are Aboriginal or Torres Strait Islander as defined under [section 4 of the Family Law Act 1975](#).

(c) Family Dispute Resolution (FDR) Services

- (i) Consideration of resolution processes other than litigation
 - A. In a family law matter under [Guideline 4 - \(4\)](#), the Commission must consider making a grant of legal assistance for an applicant for assistance to participate in FDR services before it considers making a grant of legal assistance to that applicant for litigation services at any stage in the proceedings.
- (ii) Appropriateness of participation in FDR services
 - A. The Commission will only make a grant of legal assistance requiring an applicant to participate in FDR services if it considers that this is appropriate in the particular case. Participation in FDR services is usually inappropriate where:
 - I. the matter is considered to be an urgent matter under [Guideline 4 - \(4\)\(a\)\(ii\)](#) of these [Guideline 4 - \(4\)](#),

- II. for family law matters relating to a child of the parties, there are any current reported allegations of child abuse, or investigations or court proceedings about child abuse currently taking place;
- III. a party's safety or ability to negotiate effectively is jeopardised by behaviour of the other party such as violence, intimidation, control or coercion, or a history of such behaviour; or
- IV. one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason).

(d) **Independent Representation of Children**

- (i) Assistance for independent representation of children's interests
 - A. The Commission may make a grant of legal assistance for the independent representation of children's interests in court proceedings if:
 - I. a court makes an order that the child's interests be independently represented by a lawyer and asks the Commission to arrange for a lawyer to provide the independent representation; and
 - II. the Commission decides that it is reasonable to provide a grant of legal assistance for the Independent Children's Lawyer;

Note: A court order that an independent children's lawyer be appointed in a matter does not impose an obligation on the Commission to make a grant of legal assistance for the independent representation.
 - B. The Commission should make a grant of legal assistance for the independent representation of a child's interest in any court proceedings relating to special medical procedures (including sterilisation).
 - C. An application for a grant of legal assistance under this [Guideline 4 - \(4\)\(d\)\(i\)](#) is not subject to the means test.
- (ii) Payment for the costs of separate representation by a party not receiving legal assistance
 - A. If the Commission makes a grant of legal assistance for an independent children's lawyer the Commission must give consideration as to the ability of the parties to the proceedings to:
 - I. contribute to the costs associated with a single expert report; and
 - II. contribute to the costs and disbursements associated with the grant of legal assistance for the independent children's lawyer.
 - B. The Commission may determine an amount to be paid by each party taking into account:
 - I. the party's capacity to pay;
 - II. the party's legally aided status; and
 - III. contributions assessed on existing files.
 - C. Taking into account that the parties are equally liable to pay a single expert witness's reasonable fees and expenses incurred in preparing a report (Family Law Rules, [R15.47](#)) ordinarily, if a party is unaided they will be required to contribute to an equal portion of the cost of the single expert.
 - D. [Guideline 4 - \(4\)\(d\)\(ii\)A](#) does not apply to proceedings for special medical procedures involving a child in which a grant of legal assistance for independent representation of the child's interest has been made, regardless of whether or not any of the parties to the proceedings are receiving legal assistance under a grant of legal assistance.
 - E. If a party refuses or fails to pay the amount required by the Commission under this [Guideline 4 - \(4\)\(d\)\(ii\)](#), legal assistance for the independent children's lawyer should continue to be provided on the condition that the independent children's lawyer, in appropriate circumstances, seek an order for costs against that party at an appropriate time in the court proceedings.

(e) Parenting Orders**(i) Assistance for parenting orders**

A. The Commission may make a grant of legal assistance for a court application for a parenting order under the *Family Law Act 1975* if the Commission is satisfied that:

- I. there is a dispute about a substantial issue, and
- II. any of the following circumstances apply:
 - the party has a certificate under section 60i of the *Family Law Act 1975* in relation to the dispute; or
 - participation in FDR services is inappropriate in accordance with [Guideline 4 - \(4\)\(c\)](#) of [Guideline 4 - \(4\)](#).

(ii) Assistance for applications to discharge or vary parenting arrangements

A. Subject to [Guideline 4 - \(4\)\(d\)\(ii\)B](#) the Commission may make a grant of legal assistance for a court application to discharge or vary a parenting order or to set aside a registered parenting plan under the *Family Law Act 1975* if the Commission is satisfied that:

- I. there is a dispute about a substantial issue,
- II. any of the following circumstances apply:
 - the party has a certificate under section 60i of the *Family Law Act 1975* about the dispute;
 - participation in FDR services is inappropriate in accordance with [Guideline 4 - \(4\)\(c\)](#) of [Guideline 4 - \(4\)](#), and
- III. any of the following circumstances apply:
 - there has been a material change in circumstances since the parenting order was made or the parenting plan was registered, or
 - the court application is imperative.

Examples:

- ~ The likelihood of violence, or physical or mental harm, to the applicant or a child.
- ~ The removal or risk of removal of a child from an applicant who has primary residence responsibilities.
- ~ The removal or risk of removal of a child from the jurisdiction of the Court.
- ~ The need for an applicant with primary residence responsibilities to move permanently overseas, interstate or elsewhere with a child, if consent is unreasonably refused by another person.

B. If the material change in circumstances referred to in [Guideline 4 - \(4\)\(e\)\(ii\)A.III](#) has been caused by the applicant for assistance, the Commission must consider the circumstances surrounding that change in determining whether it is appropriate to make a grant of legal assistance to the applicant.

(iii) Assistance to parties who are not parents

A. The Commission may make a grant of legal assistance to a party who is not a parent in court proceedings relating to a parenting order under the *Family Law Act 1975* if:

- I. the party is significant to the care, welfare and development of the relevant child, or
- II. the Commission considers it to be in the child's best interests.

Example:

- ~ It may be in the child's best interests if the child's safety or welfare is at risk.

- B. Notwithstanding [Guideline 4 - \(4\)\(e\)\(iii\)A.I](#), in circumstances where a child protection authority is involved and is supportive of the third party, the Commission may grant aid to the extent necessary to secure the child's best interests.
- (iv) Assistance where care and protection proceedings
- The Commission may make a grant of legal assistance for a court application for a parenting order under the [Family Law Act 1975](#) even if there are current care or protection orders in force under a State or Territory law; or court proceedings under a State or Territory child welfare law are currently taking place, in respect of the child.
- (f) **Special Medical Procedures Involving Children**
- (i) Assistance for parents
- A. The Commission should make a grant of legal assistance to the parents of a child in any court proceedings for special medical procedures (including sterilisation) involving the child.
- B. An application for a grant of legal assistance under this [Guideline 4 - \(4\)\(f\)](#) is not subject to the merits test.
- (g) **Recovery, Location and Information Orders**
- (i) Assistance for recovery, location and information orders
- A. The Commission may make a grant of legal assistance for proceedings under the [Family Law Act 1975](#) for a recovery, location and/or information order for the location and/or recovery of a child.
- B. A grant of legal assistance under this [Guideline 4 - \(4\)\(g\)](#):
- I. should usually be limited to \$2,000, and
- II. should only be made on the condition that the applicant for assistance seek a costs order against the respondent to the court application, unless that party is also receiving legal assistance under a grant of legal assistance.
- (h) **Appeals**
- (i) Assistance for appeals
- A. The Commission may make a grant of legal assistance for an appeal in relation to a family law or child support order, including for the participation of an independent children's lawyer in an appeal, only if the matter is eligible for assistance under another guideline in [Guideline 4 - \(4\)](#).
- B. The Commission must take the provisions of the [Federal Proceedings \(Costs\) Act 1981](#) into account before making a grant of legal assistance under this [Guideline 4 - \(4\)\(h\)](#).
- (i) **Enforcement of Court Orders**
- (i) Assistance for enforcement proceedings
- A. The Commission may make a grant of legal assistance for court proceedings to enforce a final or interim court order in a family law matter.
- B. A grant of legal assistance under this [Guideline 4 - \(4\)\(i\)](#):
- I. should usually be limited to \$2,000; and
- II. should only be made on the condition that the applicant for assistance seek a costs order against the respondent to the court application, unless that party is also receiving legal assistance under a grant of legal assistance.
- (j) **Contempt of Court and Breach of Court Orders**
- (i) Assistance for contempt of court or contravention of court orders
- A. The Commission may make a grant of legal assistance to an applicant for assistance in a family law or child support matter, to be dealt with for:
-

- I. contempt of court, or
 - II. contravention of an order of the court.
- B. Where the applicant is a respondent to court proceedings, in determining whether to grant assistance, the Commission should have regard to the severity of any penalty to which the person is likely to be subject.
- (k) **International Child Abduction matters**
- (i) Assistance in relation to international child abduction matters
 - A. The Commission may make a grant of legal assistance to an applicant for assistance to:
 - I. defend an application to the court under the *Hague Convention on the Civil Aspects of International Child Abduction* (the Convention) for:
 - the return of a child who has been removed from a convention country to, or retained in, Australia; or
 - access to a child who is living in Australia;
 - II. make an application to the court under the *Family Law (Child Abduction Convention) Regulations 1986* 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;
 - III. make an application to the court under a bilateral agreement in relation to a child who has been wrongfully removed to Australia.
 - B. A grant of legal assistance is not available for an applicant to intervene in proceedings for the return of a child under the Convention.
- (l) **Family Law Costs Management**
- (i) General
 - A. In this [Guideline 4 - \(4\)\(l\)](#):
 - I. **a family law or child support matter** includes any dispute that involves the same parties about the same or substantially the same issue, if there has not been a material change in circumstances or if any such change would not materially affect existing orders;
 - II. **costs of a matter** means the total costs paid by the Commission in a family law or child support matter in which a grant of legal assistance has been made (taking into account the costs paid by any other LAC, if the matter has been transferred from one or more of the States or Territories), including counsels fees, fees for expert reports and other disbursements (except interpreter and translator fees, rural travel and accommodation costs), less any Contributions collected by the Commission from the Legally Assisted Person and any Costs Recovered by the Commission.
 - B. The Commission should treat the following proceedings as a new matter for the purposes of the Family Law Costs Management Methodology:
 - I. recovery, location and/or information order relating to the location and/or recovery of a child;
 - II. appeals;
 - III. enforcement proceedings.
 - C. The costs management principles in this [Guideline 4 - \(4\)\(l\)](#) apply to all grants of Legal Assistance made by the Commission for family law matters.
 - (ii) Limit on costs

- A. Under a grant of legal assistance, payment of the costs of a matter under the Commission's usual fee scales for a party in a family law or child support matter regardless of whether legal assistance in the matter is provided inhouse by the Commission or by an External Service Provider, is limited to \$12,500.

Note: Each commission will calculate this fee ceiling on the following basis – FDR, issue proceedings in the Family Court, two interim hearings, preparation for trial, three day final hearing, conferences and instructing, plus the cost of a family report and miscellaneous disbursements such as service fees.

- B. The limit on costs does not apply to grants of legal assistance to Independent Children's Lawyers.

(iii) If costs likely to exceed limit

- A. Subject to [Guideline 4 - \(4\)\(l\)\(iii\)B](#) and [Guideline 4 - \(4\)\(l\)\(iii\)C](#) the Commission may increase the costs limit for a particular grant of legal assistance if, in its opinion, undue hardship would otherwise be caused to an applicant, having regard to the following factors:

- I. whether the applicant for assistance has incurred significant additional costs due to circumstances of a kind listed in [Guideline 4 - \(4\)\(b\)\(iii\)](#);
- II. whether it would be unreasonable to expect the applicant for assistance to adequately represent himself or herself due to circumstances of a kind listed in [Guideline 4 - \(4\)\(b\)\(iii\)](#);
- III. whether the costs of the applicant for assistance have increased significantly through no fault of the applicant;
- IV. the number and complexity of issues in dispute;
- V. the likelihood of risk to a child's safety or welfare.

- B. Before making a decision under [Guideline 4 - \(4\)\(l\)\(iii\)A](#), the Commission will have considered whether it is possible to contain costs by:

- I. providing legal assistance for the matter in-house; or
- II. considering whether alternative means of funding are appropriate, including negotiating a fee package that is not in accordance with the Commission's usual fee scales with an External Service Provider.

- C. Any decision made by the Commission under [Guideline 4 - \(4\)\(l\)\(iii\)A](#) to increase the costs limit for a particular grant of legal assistance should be subject to the nature and extent of the additional costs which will be determined strictly by the Commission or agreed between the Commission and the External Service Provider (as appropriate) having regard to the following factors:

- I. advice from the court and the parties about the estimated length of time required for the hearing of the matter;
- II. the number and nature of witnesses who must be called or cross-examined; and
- III. whether the other parties to the matter have legal representation.

(5) **Criminal Law Matters**

For the criminal law priorities see [Schedule B of the National Partnership Agreement, the Commonwealth Legal Aid Service Priorities, Criminal Law Priorities](#)

(a) **General**

(i) Assistance in Commonwealth Criminal law matters

- A. The guidelines to be applied by the Commission are the guidelines used by the Commission, at the date of the relevant application for assistance, for applications for assistance in State or Territory Criminal law matters.

(6) Civil Law Matters

For the civil law priorities see *Schedule B of the National Partnership Agreement, the Commonwealth Legal Aid Service Priorities, Civil Law Priorities*

(a) Currently Serving or Ex-Service Personnel (War Veterans) Matters**(i) Assistance for Currently Serving or Ex-Service Personnel Matters**

- A. The Commission may make a grant of legal assistance to an applicant for assistance who is currently serving or ex-service personnel or a dependent of currently serving or ex-service personnel in relation to:
- I. appeals from decisions of the *Veterans Review Board* about war caused disability pension entitlement or assessment claims under *Part II of the Veterans Entitlements Act 1986*; and
 - II. appeals from decisions of the *Veterans Review Board* about claims under the *Military Rehabilitation and Compensation Act 2004* that relate to warlike or non-warlike service, in regard to:
 - *acceptance of liability (Chapter 2)*;
 - *rehabilitation programs (Chapter 3, Part 2)*;
 - *permanent impairment (Chapter 4, Part 2)*;
 - *incapacity payments for former members (Chapter 4, Part 4)*;
 - *special rate disability pension (Chapter 4, Part 6)*;
 - *other types of compensation for members and former members (Chapter 4 Part 7)*; and/or
 - *dependants' benefits (Chapter 5)*.
- B. An application for a grant of legal assistance under [Guideline 4 - \(6\)\(a\)\(i\)](#) is not subject to:
- I. the means test; or
 - II. the applicant for assistance making any contribution to the cost of his or her legal assistance provided by the Commission in relation to the matter, other than to the extent of any costs recovered from the respondent in the matter.

(b) Proceeds of Crime**(i) Proceedings under the *Proceeds of Crime Act 2002***

- A. The Commission may make a grant of legal assistance to an applicant for assistance in proceedings under the *Proceeds of Crime Act 2002* if the applicant has property that is covered by a restraining order under the Act, or is likely to be covered by such an order.
- B. In assessing an applicant's eligibility under the means test for the purpose of determining an application for a grant of legal assistance under this guideline, the Commission must disregard any property of the applicant that is subject to a restraining order or confiscation order under the *Proceeds of Crime Act 2002*, or is likely to be covered by such an order.
- C. In assessing an applicant's eligibility under the merits test for the purpose of determining an application for a grant of legal assistance under this guideline, the Commission should disregard the *appropriateness of spending limited public legal aid funds' test*.
- D. The costs of providing legal assistance to an applicant for assistance under a grant of legal assistance will be reimbursed to the Commission in accordance with [sections 293](#) of the *Proceeds of Crime Act 2002*.
- E. The Commission must ensure that the costs claimed by it in accordance with [Guideline 4 - \(6\)\(b\)\(i\)D](#) are fair and reasonable, and in accordance with the Commission's usual fee scales for civil law matters.

Guideline 5 - State Law Matters

(1) Criminal Law Matters

(a) Bail Applications (Magistrates and Supreme Court)

- (i) Assistance will normally be provided in respect of bail applications only where:
 - A. Bail is opposed by the prosecution; and
 - B. On the information provided there exists a realistic prospect of bail being granted.

(b) Preliminary Proceedings

Assistance will only be provided for applications and depositions where the examination of the proposed witnesses is justified in accordance with the considerations outline in section 331B of the *Criminal Code*.

(c) Magistrates Court Prosecutions

- (i) Assistance may be provided in relation to summary prosecutions where conviction is likely, having regard to all the circumstances, including prior convictions, to result in:
 - A. the imposition of a gaol sentence; or
 - B. the applicant suffers from a disability or disadvantage which prevents self-representation.
- (ii) Where an applicant is in receipt of a grant of legal assistance for a contest mention hearing in the Magistrates Court and receives a sentence indication from the presiding Magistrate which indicates that a sentence of imprisonment is not likely, the grant of aid will not be extended beyond that contest mention hearing.
- (iii) Where aid is sought to defend a charge, applicants must satisfy the Commission that they have a genuine defence to the charge on the merits or that there is a strong possibility that a no case submission would be successful. The Commission will not fund the defence of a matter solely on the basis of putting the prosecution to proof.
- (iv) A grant of aid will not be made available for any traffic offences unless the applicant is charged with dangerous or negligent driving that result in death or serious injury.
- (v) A grant of aid will not be made available for drug charges that are triable summarily.
- (vi) A grant of aid will not be made available for applications to breach Community-based orders including probation or community service breaches, breaches of bail or failure to appear charges (this extends to applications brought in the Supreme Court).

(d) Youth Justice Act Matters

- (i) Most matters arising under the *Youth Justice Act 1997* are now dealt with out of Court by cautioning and community conferencing. Therefore those matters that are the subject of Court proceedings are considered serious. However, aid will only be granted where there is a probability of serious consequences (ie detention) following a conviction. However, aid may be made available if special circumstances surround the case, or the applicant.
- (ii) Aid for a defended hearing or trial will be subject to the Commission's *State Merits Test*.
- (iii) A grant of aid for a *Youth Justice Act 1997* matter will be given to a Commission practitioner, in preference to a private practitioner, unless exceptional circumstances exist.

(e) Cross-examination of victims of certain offences - Section 8A

- (i) Assistance may be provided where a Court has made an order pursuant to s8A of the Evidence (Children and Special Witnesses) Act.

(f) Intermediaries

- (i) Assistance may be provided where a witness may be prescribed witness for the purposes of the 'Intermediaries Scheme' under the Evidence (Children and Special Witnesses) Act.

(g) **Dietrich/Pirimona Type Cases**

- (i) Assistance in criminal matters will be given where the accused is charged with a serious offence, and, where allowing a trial to proceed without legal representation would in all the circumstances be unfair to the accused taking into account such matters as but not limited to:
- A. the complexity of the issues raised on the Crown papers;
 - B. the number of counts in the indictment;
 - C. the nature of the evidence and how it is to be given;
 - D. the likely sanction on a guilty verdict being returned;
 - E. the background, intellectual capacity and any other relevant matter relating to the accused;
 - F. and otherwise whether fairness to the accused could be ensured by having the matter conducted before a jury without the presence of counsel.

(h) **Appeals**

- (i) Appellants
- A. Aid may be granted for an appeal against conviction and/or sentence where there exists:
 - I. a reasonable prospect of success; or
 - II. a substantial advantage to the applicant such as regaining his or her liberty, livelihood or employment; or a substantial reduction in the sentence.
 - B. Aid for appeals on a matter of legal principle, which would not give rise to a substantial benefit to the applicant can only be granted by the Director or a Legal Aid Committee.
- (ii) Respondents
- A. Legal assistance may be granted to respond to a Crown appeal without regard to the merit test.

(2) Civil Law Matters**(a) General**

- (i) The Commission will give aid for some civil matters. Applications for aid will be considered for priority clients as outlined in Schedule B of the National Partnership Agreement on Legal Assistance Services 2015-2020.
- (ii) Applications for matters likely to result in an order for damages or compensation should be made to the Civil Disbursement Fund, as these matters will not be given high priority under this guideline.
- (iii) Applications for aid for planning appeals will not be considered.

(b) Child Protection Matters

- (i) In the event that proceedings may result in the removal of a child from the care of the person seeking aid where that person is the normal carer of the child, aid may be granted to defend or otherwise act, subject to the Commission being satisfied on the merits of the particular case.
- (ii) Where the Commission is satisfied on the merits of a case that a child needs separate representation, it will grant aid for such representation.

(c) Family Violence

A grant of aid for a *Family Violence Act 2004* matter will be given to a Commission Family Violence practitioner, in preference to a private practitioner, unless a conflict or exceptional circumstances exist.

(d) Restraint Order**(i) Applicants**

A. Aid will be granted to applicants to apply for a restraint order who are subjected to:

- I. threats or actual personal injury;
- II. threats or actual property damage;
- III. offensive or provocative behaviour which is likely to lead to a breach of the peace; or
- IV. acts of stalking which have caused the applicant to feel apprehension or fear;
- V. in circumstances where, in the opinion of the Director:
 - the applicant's safety is at risk; and
 - the actions of the respondent are so serious that there is no other reasonable means of protecting the applicant;

provided that the circumstances on which the application is based have been reported by the applicant or some other person, to the Police, and the Police have either not sought a restraint order on the applicant's behalf, or laid criminal charges.

(ii) Respondents

A. Assistance will not normally be granted to a respondent to oppose the making of a restraint order, or to apply for a variation of a restraint order, except in the following special circumstances:

- I. where the terms of the order sought would curtail some important right of the respondent (eg by excluding the respondent from the home), and where a Court might be persuaded to make a less restrictive order or no order at all;
- II. where the respondent was arrested pursuant to a warrant issued under [Section 106 of the Justices Act 1959](#) and is still in custody.
- III. Where the Director is satisfied that the merits of the case justify the matter being defended and there is a reasonable prospect of resisting the application.

B. Breach proceedings

Assistance is available to respondents subject to the Commission's general guidelines for summary criminal prosecutions (see [Guideline 5 - \(1\)\(c\)](#)).

(e) **Mental Health**

A grant of aid for a *Mental Health Act 2013* matter will be given to a Commission Mental Health practitioner, in preference to a private practitioner, unless a conflict or exceptional circumstances exist.

(f) **Inquests**

Assistance will not normally be granted for assistance at inquests unless there is a real possibility that the applicant will be charged with a serious offence in relation to the death. Assistance may also be granted where in the opinion of the Director there are strong reasons based on the public interest for providing representation to ensure a full airing of the facts.

Guideline 6 - Conditions

(1) Available Funds

In determining whether to grant aid or not the Commission is required to have regard to the amount of money standing to the credit of the Fund and any other money likely to be received for the purposes of the Fund and may refuse to grant aid for that reason.

(2) Emergency grants of Legal Aid

- (a) Where an urgent grant of legal assistance is required, a practitioner may telephone an LAC Office. The practitioner must satisfy the office that it is reasonable and appropriate in all the circumstances to provide the legal assistance requested and that the applicant is financially eligible.
- (b) If legal assistance is granted in urgent cases it is on condition that a Legal Aid Application together with all documents in support, including verification of means, is received by the Commission within 7 days of the grant or such other times as the Commission may allow.
- (c) If on receipt of the written application the Commission is not satisfied that the applicant qualifies for assistance, any emergency grant of aid will be terminated retrospectively to the time of the grant and the Commission will not pay any costs or disbursements incurred on behalf of the person. In the event of such termination, a practitioner is entitled to bill the client for any costs or disbursements incurred on their behalf.
- (d) Examples of circumstances which may lead to an emergency grant of aid may include:
 - (i) a real prospect of violence;
 - (ii) the deprivation of liberty; and
 - (iii) substantial financial harm.
- (e) The following will not be regarded by the Commission as establishing a reasonable and appropriate basis for an emergency grant:
 - (i) delay on the part of an applicant to instruct a solicitor which may be taken to indicate a lack of emergency in which event the application should be made in the ordinary manner;
 - (ii) delay on the part of a solicitor in applying for legal aid, acting in the matter for which aid is sought, for a considerable time.

(3) Change In Circumstances

- (a) If the practitioner ascertains, whether from the applicant or otherwise, any fact or information which suggests that the information provided in the client's application is not correct or complete, or that his or her case is not a deserving one, or that legal aid should not have been granted, or that there is any change in the applicant's means - whether for better or for worse - an immediate report must be made to the Commission.
- (b) The attention of practitioners is drawn to [Section 46\(1\) of the Legal Aid Commission Act 1990](#) in this respect.

(4) Client's Obligation to Accept Legal Advice

- (a) Clients in receipt of legal aid are required, as a condition of the assignment, to accept the reasonable advice of their legal practitioner.
- (b) If any Legal Aid client refuses to accept or follow reasonable legal advice, an immediate report must be made to the LAC to permit a determination of whether or not legal aid should continue.

(5) Transfer of Legal Practitioner

- (a) An applicant who wishes to change legal practitioner and continue to receive legal aid must write to the Commission to request approval of the change, setting out the reasons for the request. Approvals are not granted automatically, and must be justified by the circumstances.
- (b) The Commission will generally approve all requests for a transfer of aid from one private practitioner to another where there is no additional cost and there is no breach of the conditions of the grant of aid.

(6) Limitations on grants of Aid

All grants of aid made will have a maximum limit placed upon them. Unless exceptional circumstances exist, the Commission will not pay any account which exceeds the maximum limit unless an extension of assistance has been granted. The maximum limits that will apply are as set out in [In Globo Fees For grants of Aid](#).

(7) Extensions

- (a) Extensions of existing assignments should be sought in writing except in emergencies. Delay on the part of a private solicitor in applying for an extension will not be regarded by the Commission as establishing a reasonable and appropriate basis for an emergency grant.
- (b) All applications for extensions must include an assessment of merit, a statement of the costs to date, and an assessment of the amount of costs required to conclude the matter.

Guideline 7 - Contributions

(1) Contributions

(a) Principles

- (i) The assessment by the Commission, of contributions to be paid by assisted persons, is governed by two fundamental principles:
 - A. that an assisted person shall be required to contribute to the cost of providing assistance according to their ability to pay without undue hardship;
 - B. that subject to [Guideline 7 - \(1\)\(a\)\(i\)A](#) an assisted person shall be placed in a position which, so far as possible, is not better and not worse than that of an unassisted person in relation to the payment of costs at the conclusion of proceedings.

(b) Payment of Contribution

- (i) A contribution is set as a condition of legal aid. Private practitioners are responsible for the collection of contributions on files unless specifically advised to the contrary by the Commission.
- (ii) The amount of the contribution on income for electronic lodgments is assessed according to [Simplified Contributions on Income](#) and for all other lodgments is assessed according to [Standard Contributions on Income](#) and depends on the category of the legal matter for which assistance is sought and the amount of the applicant's weekly disposable income.

(c) Initial Contributions

Subject to any discretion vested in the Director, where an applicant satisfies the Means Test, an initial contribution will be payable at a minimum level of \$60.

(d) Refusal of Assistance

There is no universal upper limit on the amount of weekly disposable income that an applicant may have and still qualify for contributory assistance.

(e) Contribution on Assets

- (i) The amount of contribution on assets for electronic lodgments is calculated according to [Simplified Contributions on Assets](#) and for all other lodgments is calculated according to [Standard Contributions on Assets](#) for all types of matters.
- (ii) If it will be necessary for an income-producing asset (eg bank savings) to be used to pay a contribution and loss of income will result, the income test should be applied to that new income.

(f) Payment of Contribution

- (i) Contribution on assets will ordinarily be payable by one instalment upon acceptance of an offer of assistance. Applications for extension of time will be considered.
- (ii) It is Commission policy that unpaid contributions, not waived by the Director, will be enforced by legal proceedings in the appropriate Court or Tribunal.

(g) Final Contributions

- (i) The Means Test applies only to initial and interim contributions. The final contribution is assessed with regard to the outcome of the proceedings, and not pursuant to the Scales of the Means Test.
 - (ii) Where the monies are recovered, normal policy is to require full contribution of the gross fees and disbursements (ie 100%) from the settlement funds.
 - (iii) If some contributions have been paid along the way, pursuant to the [Means Test](#) these are set-off against the final sum required see [Guideline 7 - \(1\)\(i\)](#)
 - (iv) Departure or waiver from the requirement of full costs from settlement funds, should only be granted in the most extreme cases ("special circumstances"), as it is intended that full costs should ordinarily be recovered by the Commission.
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- (v) The term "special circumstances" is by its very nature, incapable of precise or exhaustive definition, but generally, special circumstances will not be regarded as present where:
- A. the assisted person has spent, or otherwise disposed of the award despite prior advice that all or part of the costs would be recoverable as a contribution;
 - B. the assisted person's solicitor has released settlement monies to the person in breach of the terms of assignment and the assisted person is unable or unwilling to repay the debt. In such a situation, recovery action may be taken;
 - C. the assisted person wishes to pay out other creditors;
 - D. the assisted person wishes to use the settlement sum to purchase a home;
 - E. the settlement is less than the amount that the assisted person feels that he or she was entitled to receive;
 - F. the legal costs vis-a-vis the settlement funds result in little or no available funds to the assisted person, after costs are deducted.
- (h) **Assessment of Final Contributions**
- (i) In applying the two fundamental principles governing the assessment of contributions, the person making the assessment shall have primary regard to the proposition that an assisted person should be placed in a position which is, so far as possible, equal to but no better than that of an unassisted person in relation to the payment of costs.
 - (ii) Consideration shall then be given to the question whether the assisted person would, if she or he was required to pay the full amount of costs, be placed in a position of undue hardship. In determining whether undue hardship would occur in the particular case, consideration shall be given to all relevant factors including, where applicable, the following:
 - A. the cost to the Commission of providing assistance;
 - B. the value of any sum of money or property or other benefit obtained by the assisted person as a result of the proceedings;
 - C. the nature and extent of the assisted person's current income, assets and liabilities and whether any relevant changes in the assisted person's financial situation are likely to occur in the near future;
 - D. the uses to which the assisted person proposes to put any funds obtained as a result of the proceedings and the extent to which it is reasonable that those uses should be given priority over payment of legal costs;
 - E. the extent to which an assisted person or other parties to proceedings have by their unreasonable conduct unnecessarily increased the cost of proceedings shall be a relevant factor to be taken into account when assessing the assisted person's contribution;
 - F. contributions shall ordinarily not be required in cases involving a question of public importance or cases having the character of test cases unless the assisted person stands to gain a substantial personal financial benefit as a result of the proceedings. Assisted persons should not be required to pay for a resolution of legal points or questions of public interest going beyond their immediate concern in the case at issue.
 - (iii) Where an amount in respect of costs is recoverable by an assisted person the Director shall determine the amount of their contribution in accordance with the following:
 - A. where an order is made in a proceeding that the costs, whether or not including disbursements, of a legally assisted person be paid by another party to the proceedings, the amount to be determined by the Director shall include the whole of those costs and the whole of any disbursements so recovered;
 - B. where, by virtue of a settlement or compromise, another person has agreed to pay a specified amount in respect of the costs, or of the costs or disbursements, of a legally assisted person, the amount to be determined by the Director shall include the whole of such amount;

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- C. the amount of the person's total contribution toward the cost of assistance, to be determined by the Director shall equal the sum of the ordinary professional costs (including solicitor and client costs) of the legal services provided to the person in the proceeding or matter in respect of which legal assistance was provided and any disbursements (including barrister's fees) and out-of-pocket expenses incurred in or in connection with the provision of those services unless, in the opinion of the Director, such a determination would operate unfairly to or cause hardship to the applicant or her or his dependants;
 - D. in forming his/her opinion as to whether or not a determination might operate unfairly to or cause hardship to an applicant or his/her dependants, the Director shall have regard to the following considerations:
 - I. the amount recovered and/or recoverable by the legally assisted person in the proceeding or matter;
 - II. the age of the applicant;
 - III. the state of health of the applicant;
 - IV. the income of the applicant;
 - V. the outgoings to which the applicant is committed;
 - VI. any other special needs of the applicant;
 - VII. the age, state of health and special needs (if any) of the dependants of the applicant;
 - VIII. the purpose to which the applicant proposes to apply the amount recoverable in the proceeding or matter;
 - IX. the actual cost to the Commission of the proceeding or matter; and
 - X. the effect of the outcome of the proceeding or matter on the financial or domestic situation of the legally assisted person and of his dependants.
- (iv) An assisted person who is required to contribute to costs has the right to sight a copy of his/her lawyer's account. An assisted person has the right to verify for him or herself that the amount of costs which the Commission says it has paid, or will pay, has in fact been claimed by the lawyer and has the right to verify for him or herself whether the services for which costs are claimed by the lawyer were in fact performed. An assisted person who is required to repay the full amount of costs shall be expressly informed by the Commission of this right.
 - (v) Applicants for assistance shall, at the time assistance is offered, be informed by the Commission that they should expect to have to repay to the Commission the full amount of costs from any monetary settlement obtained or from the proceeds of sale of an interest in property proceedings and that they may be required to give the Commission an equitable charge to secure repayment of costs. The actual contribution shall be determined in the light of the assisted person's circumstances at the time the assessment is made and in accordance with the usual principles applicable to the assessment of contributions.
- (i) **Adjustment of Contribution**
 - (i) Where the final private costs of an assisted matter are less than the total of the contribution plus party-party costs recovered:
 - A. no further instalments of contribution are payable; and
 - B. if contributions already paid, together with costs recovered, exceed private legal costs the difference is refunded to the assisted person.
 - (j) **Charges Upon Property**
 - (i) Assisted persons may be requested to give the Commission an equitable charge over property which they own or in which they have an interest in order to secure payment of a contribution in the future. Equitable charges are taken to ensure, so far as possible, that assisted persons are treated equally in relation to the payment of contributions. If equitable charges were not taken, assisted persons who were unable to pay contributions immediately because their assets were in the form of property rather than cash, would be placed in a preferred position to assisted persons
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- who could afford a contribution because their assets (while not greater in total value) were in the form of cash rather than property.
- (ii) The guidelines for the taking of equitable charges are:
 - A. applicants for assistance may (in addition to being liable to pay any initial contribution assessed) be offered assistance subject to the condition that they execute an equitable charge where:
 - I. the applicant has an interest in property which is capable of being charged; and
 - II. costs and disbursements may, in the opinion of the Commission, exceed \$1,000.00;
 - B. an assisted person may be requested during or at the conclusion of assistance to secure payment of a contribution at a later date by executing an equitable charge to the extent of the full amount of costs and disbursements incurred or to be incurred where:
 - I. the assisted person has an interest in property capable of being charged (including an interest received as a result of proceedings); and
 - II. the assisted person lacks the means to pay a significant contribution by way of lump sum or instalments; or
 - III. costs and disbursements exceed \$1,000.00.
 - (iii) Where land or other property is recovered or preserved for an assisted person in the course of the legal proceedings for which assistance was granted, the Commission may take an equitable charge over that property to secure any contribution owing.
 - (iv) The Commission may lodge notice of the charge with the Registrar- General, and must notify the assisted person in writing of the fact that a notice has been lodged and of the amount owing.
 - (v) Where an interest in property is the subject of an equitable charge and is sold or otherwise dealt with, the amount of the contribution to be paid by the assisted person shall be the amount of costs and disbursements secured by the charge. Where payment of this amount may, in the opinion of the Commission, cause exceptional hardship, the amount of the contribution may be reduced.
 - (vi) Where a person does not have sufficient income to fund an action and a charge is taken, usually that charge will not be invoked until the death of the surviving financially associated person of the relationship.

(2) Simplified Contributions on Income**(a) Assessment Table 1****CONTRIBUTION THRESHOLDS GROSS INCOME \$ PER WEEK**

Number of Dependants	Initial Contribution Threshold	Maximum Income Threshold
0	\$525	\$1025
1	\$650	\$1150
2	\$775	\$1275
3	\$900	\$1400
4	\$1025	\$1525
5+	\$1150	\$1650

CLIENT CONTRIBUTION TABLE

Up To	Contribution Amount
Threshold	\$60
\$100 Over	\$200
\$200 Over	\$320
\$300 Over	\$500
\$400 Over	\$790
\$500 Over	\$1090

(3) : Simplified Contributions on Assets

(3) **Simplified Contributions on Assets**(a) **Assessment Table 2**

Net Asset Up To \$	Contribution \$	Net Asset Up To \$	Contribution \$
0	60	1599	510
99	60	1600	560
100	80	1699	560
199	80	1700	610
200	100	1799	610
299	100	1800	660
300	120	1899	660
399	120	1900	710
400	140	1999	710
499	140	2000	760
500	160	2099	760
599	160	2100	820
600	190	2199	820
699	190	2200	860
700	220	2299	880
799	220	2300	940
800	250	2399	940
899	250	2400	1000
900	280	2499	1000
999	280	2500	1060
1000	310	2599	1060
1099	310	2600	1120
1100	350	2699	1120
1199	350	2700	1180
1200	390	2799	1180
1299	390	2800	1240
1300	430	2899	1240
1399	430	2900	1300
1400	470	2999	1300
1499	470	3000	1360
1500	510		

(4) : Standard Contributions on Income

(4) **Standard Contributions on Income**(a) **Assessment Table 1**

Applicant's Assessable Income Contribution (Nearest \$10)	Category 1 (Est Costs up to \$900)	Category 2 (Est Costs up to \$3000)	Category 3 (Est Costs Over \$3000)
	(Rounded to Nearest \$5.00)		
\$	\$	\$	\$
160	60	60	60
160	60	150	290
165-174=170	110	210	410
175-184=180	140	270	530
185-194=190	170	330	650
195-204=200	220	430	850
205-214=210	260	510	1010
215-224=220	310	610	1210
225-234=230	370	730	1450
235-244=240	440	870	1730
245-254=250	500	990	1970
255-264=260	570	1130	2250
265-274=270	650	1310	2610
275-284=280	740	1470	2930
285-294=290	No aid	1750	3490
295-304=300	No aid	1930	3850
305-314=310	No aid	2130	4250
315-324=320	No aid	2330	4650
325-334=330	No aid	2530	5050
335-344=340	No aid	2730	5530

\$345 and over - Assistance available for Category 3 matters only.

Contribution to be \$5,530 plus \$50 for every \$1 of assessable income in excess of \$335.

(5) Standard Contributions on Assets

(a) Assessment Table 2

(Round to nearest \$100)			
Net Asset	Contribution	Net Asset	Contribution
\$	\$	\$	\$
100	20	1,600	500
200	40	1,700	550
300	60	1,800	600
400	80	1,900	650
500	100	2,000	700
600	130	2,100	760
700	160	2,200	820
800	190	2,300	880
900	220	2,400	940
1,000	250	2,500	1,000
1,100	290	2,600	1,060
1,200	330	2,700	1,120
1,300	370	2,800	1,180
1,400	410	2,900	1,240
1,500	450	3,000	1,300

Above \$3,000: \$1,300 plus 100% of assessable assets above \$3,000

(6) Standard Contributions Assessment Form

Category 1, 2 & 3 of Litigation Costs see [Contributions on Income](#)

INCOME TEST

Weekly Gross Income	\$
Tax and Medicare Levy	\$
Housing (actual costs incurred per week)	
a. Rent	\$
b. Rates	\$
c. Mortgage	\$
d. 1/2 Board	\$
Total Housing or Max \$120 see Contributions - Benchmark Amounts	\$
Child Care Costs (Actual costs incurred per week or max. \$115 per child - see Contributions - Benchmark Amounts)	\$
Maintenance Payments see Dependants' Table below for maximum allowance per dependent	\$
Dependants	
Allowance per Spouse/Child Dependent	
1 = \$67	5 = \$323
2 = \$131	6 = \$387
3 = \$195	7 = \$451
4 = \$259	8 = \$515
Total Deductions	\$
Net Income (Weekly Gross Income less Total Deductions)	\$
Income Contribution (1) (see Contributions on Income to calculate)	\$
ASSETS TEST	
Cash	\$
Shares, debentures etc.	\$
Is there a car equity over \$11,500? By how much?	\$
Is there a home equity over the value in Contributions - Benchmark Amounts?	
If so, by how much?	\$
Equity in second car/boat/caravan etc.	\$
Other valuable disposable assets	\$
TOTAL	\$
Allowable Assets	
Single = \$740	
Two or more = \$1,490	
Less Allowable Assets	\$
Net Assets	\$
Assets Contribution (2)	\$
Contribution [add Contribution (1) and (2)]	\$
Commitment	\$

(7) Contributions - Benchmark Amounts**(a) Rent**

The median weekly rental for a 2-bedroom flat in the three telephone districts is as follows:

62 (South)	\$125
63 (North)	\$115
64 (North West)	\$100

(b) Housing

The median value of an established 3-bedroom house in the three telephone districts is as follows:

62 (South)	\$370,000
63 (North)	\$270,000
64 (North West)	\$259,250

(c) Deductions for Spouses and Dependents

Spouse or first child	\$67
Each subsequent child	\$64

(d) Child Care

Actual child care costs to enable the parent to work or study, paid net after government subsidies, of up to \$115 per week are allowed.

(e) Motor Vehicle

The asset value permitted for a motor vehicle is that of a 5 year old Holden which is currently \$11,500.

(f) Henderson (after Housing) Poverty Line

The present figure is \$160.00 per week.

Guideline 8 - Costs Guidelines

(1) Accounts

(a) Interim Payment

- (i) Solicitors are expected to return certified pro forma invoices as soon as the work to which they relate has been completed.
- (ii) Interim payments will also be authorised for disbursements exceeding \$100.00 in total; subject to production of the necessary verifications of the claimed expenditure.

(b) Examination of Solicitor's Files

The LAC reserves the right to call for a solicitor's file on a legally aided matter in relation to any account rendered for payment and to ensure compliance with Commission Audit policies regarding applications for aid.

(c) Fees Recoverable on Legally Aided Matters

A solicitor or a barrister shall not accept any payment from a legally aided person (or from any other person on their behalf) in relation to a legally aided matter other than those payments which may be authorised by the LAC. A solicitor who does so may face sanction under [Section 22\(3\)\(b\)](#) of the [Legal Aid Commission Act 1990](#).

(d) Retrospective grants of Aid

The Commission will not pay a solicitor for work done prior to the grant of aid. A grant will be effective from the date an application is received by the Commission unless a solicitor can establish that an earlier date is appropriate by reason of a nexus between the matter for which aid is sought and work done prior to the date the application is received by the Commission.

(e) Correspondence with the Commission

- (i) The Commission will not accept liability to pay any fee charged in respect of any or all of the following:
 - A. assisting an applicant to complete an Application Form as required by the Commission;
 - B. interviews, letter and communications with the client and/or the Commission for the purpose of an application for legal assistance or concerning the grant or refusal of an Application for Assistance; or
 - C. preparation of and work done in connection with any itemised bill which it may require;
 - D. a report, even if requested by the Commission, where such report should have accompanied the application for aid.
- (ii) The Commission will however pay a fee in respect of the preparation and supply of a report to it where such report is requested by the Commission prior to completion of the matter for which aid has been granted, such fee to be at the rate applicable for an ordinary letter under the TLA's [Scale of Fees](#).

(f) Briefing Practitioners

- (i) In all matters except Separate Representative, Independent Children's Lawyer, Family Violence and Cross-examination of Parties Scheme matters, another practitioner can be briefed on condition that:
 - A. the brief to the practitioner will be subject to the same terms and conditions applying to the practitioner holding the grant of assistance, as set out in the Guidelines and the grant of aid;
 - B. the practitioner holding the grant of assistance will be responsible for the brief to the other practitioner notifying the other practitioner that it is subject to the Guidelines and the grant of aid;

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- C. the other practitioner's costs will be contained within the grant of aid and will not incur any additional cost to the Commission; and
 - D. the practitioner holding the grant of assistance will retain responsibility for the matter and will be responsible for deciding how much of the grant is payable to the other practitioner.
 - (ii) A Separate Representative or Independent Children's Lawyer must obtain written approval from the Commission to brief another practitioner unless:
 - A. the appearance is an adjournment or a procedural hearing where substantive submissions are not required; or
 - B. the other practitioner is on the list of Separate Representative or Independent Children's Lawyer maintained by TLA.
 - (iii) A practitioner must not brief another practitioner in a Family Violence and Cross-examination of Parties Scheme matter, unless the other practitioner is on the Cross-examination of Parties Scheme Register of Legal Practitioners.
 - (iv) Where another practitioner is briefed pursuant to [8\(1\)\(f\)\(ii\)](#) or [\(iii\)](#), it must be on the condition that:
 - A. the brief to the practitioner will be subject to the same terms and conditions applying to the practitioner holding the grant of assistance, as set out in the Guidelines and the grant of aid;
 - B. the practitioner holding the grant of assistance will be responsible for the brief to the other practitioner and notifying the other practitioner that it is subject to the Guidelines and the grant of aid;
 - C. the other practitioner's costs will be contained within the grant of aid and will not incur any additional cost to the Commission; and
 - D. the practitioner holding the grant of assistance will retain responsibility for the matter and will be responsible for deciding how much of the grant is payable to the other practitioner.
 - (g) **Disbursements**
 - (i) The Commission will not reimburse any disbursement or fee for the payment of which the practitioner could have obtained an exemption pursuant to [Section 51 of the Legal Aid Commission Act 1990](#).
 - (ii) A practitioner must obtain approval in writing prior to the expenditure of any amount in excess of \$100.00 except in the case of medical reports where the limits prescribed in [Appendix B](#) apply.
 - (iii) A solicitor is permitted to render a bill to the recipient of legal aid for FID tax on monies that are to be disbursed to the client where those monies can only properly be disbursed through the solicitors trust account and in no other way.
 - (iv) The Commission reserves the right to charge interest to successful litigants on out of pocket expenses incurred by the Commission in the course of litigation.
 - (h) **Finalisation of Matter**
 - (i) On completion of a matter practitioners shall forward a report which shall include full details of all monies recovered or to be recovered; and shall further provide the following information:
 - A. the result of the action, including details of orders made, and or penalties imposed;
 - B. particulars of any orders for costs;
 - C. a certified pro forma invoice;
 - D. vouchers in support of all disbursements which exceed \$30.00.
 - (i) **Waiting Time**
 - (i) Waiting time is paid for at the normal rate payable to solicitors.
 - (ii) Any period claimed for a waiting period which exceeds 30 minutes will not be paid for unless there is a written explanation by the practitioner with the account justifying the need for the wait.
 - (iii) The Commission has discretion in respect of the issue of waiting time and will only accept as
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being waiting time those matters which in the exercise of that discretion it regards as reasonable.

(iv) Waiting time is to be equally divided among the number of matters still to be dealt with.

(j) **Faxes**

Faxes will only be entitled to a reimbursement for transmission costs at the normal STD rate.

(k) **Transcripts**

The cost of transcripts will not be met as a disbursement by the Commission unless the assigned solicitor has received previous authorisation to apply for the transcript from the file manager.

Practitioners will not be paid for work undertaken without authorisation.

(2) Costs**(a) Solicitor's Obligation to Protect Costs**

A solicitor shall retain control of any money or property that comes into the solicitor's possession or control up to a maximum amount of a 100% contribution to the LAC until a determination has been made as to what costs and disbursements are to be repaid to the LAC by the legally aided person. Upon such determination, the solicitor shall pay to the LAC the assessed sum.

(b) Solicitor's Responsibility for Costs

Applications brought to correct faults of a procedural nature occurring due to mistake of the solicitor or counsel or of a solicitor or counsel within the same firm bringing the application, will not be paid for by the LAC and may not be charged to the client.

(c) Guidelines Pursuant To [Section 26\(2\)\(a\)](#) of the Legal Aid Commission Act 1990

- (i) A solicitor or a barrister shall not accept any payment from a legally aided person (or from any other person on their behalf) in relation to a legally aided matter other than those payments which may be authorised by the LAC. A solicitor who does so may face sanction under [Section 22\(3\)\(b\)](#) of the [Legal Aid Commission Act 1990](#).
- A. A request that the Commission pay to another party on behalf of the legally assisted person an amount representing the whole or part of the costs directed to be paid by the legally assisted person shall be made in writing to the Director and shall be supported by such material as the Director may require, verified by the Statutory Declaration of the person making the request.
 - B. The Commission shall not pay any amount pursuant to such a request unless the officer or the Legal Aid Committee deciding the request is satisfied that the legally assisted person will suffer substantial hardship unless the amount requested to be paid, or some lesser amount, is paid.
 - C. The Commission shall not pay an amount upon the request of the legally assisted person if, in the opinion of the officer or Legal Aid Committee deciding the request, the legally assisted person failed to disclose any significant and relevant matter in his/her application for assistance or where he/she was specifically advised that the Commission would not meet any order for costs made against him/her.
 - D. In making a decision upon a request, by the legally assisted person or the other party, the officer or Legal Aid Committee shall have regard, inter alia, to the following matters:
 - I. the effect on the person making the request and on the legally assisted person of the result of the proceedings;
 - II. the effect on the person making the request and on the legally assisted person of a refusal to meet the request in whole or in part;
 - III. the amount at issue in the proceedings;
 - IV. the amount at issue between the parties by way of costs;
 - V. any other action or remedy available to the person making the request or to the legally assisted person;
 - VI. the conduct of the person making the request during the proceedings;
 - VII. the conduct of the legally assisted person during the proceedings;
 - VIII. whether or not the Commission was given any notice of the likelihood of the making of an order for costs against the legally assisted person and of the likely amount of such costs;
 - IX. whether or not the matter or proceeding was in the nature of a test case having a potential benefit to persons other than the legally assisted person or the person making the request, being persons likely to be within the Means Test determined by the Commission; and

- X. the funds available to the Commission for the purpose of meeting the request and the effect of meeting the request in whole or in part on the capacity of the Commission to provide legal assistance in the future.
 - E. In determining whether or not a person will suffer substantial hardship, regard shall be had by the officer or Legal Aid Committee to, inter alia, the following matters:
 - I. whether the person or another person who usually resides with him will lose or be forced to vacate his home;
 - II. whether the person will lose a motor vehicle or the use of a motor vehicle, reasonably necessary for domestic or employment purposes;
 - III. whether the person will lose furniture or effects reasonably necessary for the well-being of himself and his dependants; and
 - IV. whether the person will lose his employment or livelihood.
 - F. No reimbursement of costs and disbursements exceeding \$5,000.00 will be made by the Commission.
- (ii) Acceptance of Party/Party Costs
- A. Where the amount of party/party costs are agreed or fixed by way of agreement, order, taxation or in any other manner binding on the parties then the solicitor acting for the legally assisted person shall be entitled to retain such amount and will not be required to tender an itemised account to the office provided that:
 - I. no further payment by way of costs, counsel's fees, disbursements, witnesses expenses, or otherwise shall be claimed or received by or on behalf of the solicitor from the legally assisted person or any person on his/her behalf;
 - II. such amount shall be accepted as full payment by the solicitor of all costs, disbursements and counsel's fees and witnesses or other expenses as are incurred by him/her in relation to the matter for which legal assistance has been granted.
- (iii) Application for Costs
- A. Where an Applicant or party to a proceeding has a right to make an Application for Costs, the Commission requires such Application to be made in all cases, save and except where the Commission instructs a practitioner not to proceed with such application.
 - B. Where the application is against the Crown as a result of criminal proceedings, costs orders should only be sought where the applicant for aid has made a substantial contribution to the grant.

(3) : Taxation

(3) **Taxation**

- (a) At the conclusion of the matter the practitioner must provide an itemised bill of costs drawn on the appropriate scale published from time to time.
- (b) The Commission has power to tax the bill of costs and shall determine the amount at which the bill shall be allowed.

See guidelines for [Taxation of Costs](#)

(4) **Taxation of Costs**(a) **General Principles**

- (i) Practitioners are obliged in legally aided matters to obtain succinct instructions from their clients given that the payment is to be made from a fund (see the judgment of [Mann J. in Melbourne Parking Station \(1929\) VLR 5](#)). Only those costs that progress the matter are claimable. If the client is unable to provide instructions succinctly it is incumbent upon the solicitor to warn the Commission of an 'extraordinary' expense.
- (ii) The Commission is aware that practitioners will have clients who want attendances for advice and reassurance or other matters of a general nature. These costs are not claimable.
- (iii) The Commission has an obligation to inform recipients of grants of aid that payment for such attendances will not be allowed.

(b) **Appointments**

- (i) Clerk's attendances on doctors' rooms to make appointments will be allowed but making appointments for clients or witnesses will not be.

See [Clerical attendances](#)

(c) **Brief**

Fee on brief will normally include both preparation and the first days hearing - see [Appendix B In Globo Fees](#), however where counsel is briefed an additional allowance may be made for attendance to read a brief where the material briefed is exceptionally voluminous or the matter is one of exceptional difficulty, provided prior approval of the Commission is given.

(d) **Clerical Attendances**

- (i) Allowance will only be made where the attendance by the clerk would have been chargeable by the solicitor had the solicitor attended to it, being a step that advanced the matter.
- (ii) Unsuccessful telephone calls will not be allowed

See [Appointments](#), [Internal communications](#), [Medical](#), [Telephone calls](#), [Witnesses](#)

(e) **Committals**

Appearances before, and preparation for, committal hearings will normally be allowed at solicitors rates but if the issues are of sufficient complexity may be allowed at counsels rate, prior approval having been sought and given by the Commission.

(f) **Counsels Fees**

Ordinarily the fee on brief includes all the preparation normally required to ready the matter for trial. In exceptional cases a reading fee may be allowed where pre-trial preparation requires counsel to peruse extensive documentation (see [perusals](#)).

(g) **Counsels Fees - Family Court**

Attendances at court on formal or short interlocutory matters will only be allowed at solicitors rate notwithstanding that the solicitor has appeared as counsel. On the other hand some matters before a

Registrar may be allowed at counsels rate with prior approval of the Commission.

(h) **Courier**

Intrastate couriers used in lieu of the postal or Ausdoc service may be allowed if the urgency of the matter predicates such use. Interstate or international courier charges will not be allowed without prior authority of the Commission.

(i) **Difficulty In Obtaining Instructions**

The Commission recognises that there are difficult clients. Where it is anticipated that, by reason of age, language, temperament or other exceptional reason instructions will be lengthy, the solicitor should warn the Commission of an extraordinary expense, so that the Commission can make an allowance which will be noted on the file.

(j) **Drawing**

A drawing fee will not be allowed for those parts of a document that are pre-printed or stored in a word processor or that are the formal parts of the document.

(k) **Engrossing**

The material typed into a pre-printed form or form stored in a word processor will only be allowed as an engrossment, with the exception of the formal parts of the document and any parts of a printed form, which will not be accepted as a professional charge.

(l) **Facsimiles**

Attendance to send a fax is regarded as an office overhead and will not be allowed.

(m) **File Notes**

(i) The taxing officer may exercise discretion in allowing for a reasonable time for each particular attendance and will be guided by the solicitor's file notes of the attendance. The taxing officer will not simply rely on the time indicated by the solicitor as having been taken. The note need not be a verbatim note of the whole attendance, but must be sufficient to substantiate the time claimed.

(ii) Perusals by a solicitor of notes taken by an apprentice or clerk of an attendance upon a client will not be allowed

(n) **Internal Communications**

(i) Attendances by a solicitor on an apprentice or secretary directing him or her to undertake any task will not be allowed. However, if an apprentice or solicitor is briefing the principal solicitor having the carriage of the matter as to the results of research specifically undertaken for the matter, the attendance of the principal will generally be allowed. On the other hand an attendance by either solicitor engaged in discussion of a particular file with another solicitor within the firm will not be allowed. This will not apply however, where in-house counsel is briefed by the solicitor with the Commission's authority.

(ii) Perusals by a solicitor of notes taken by an apprentice or clerk of an attendance upon a client will not be allowed.

See *clerical attendances*

(o) **Inquests**

Appearances before and preparation for an inquest will normally be allowed at solicitors rates but if the issues are of sufficient complexity may be allowed at counsels rate, prior approval having been sought and given by the Commission.

(p) **Letters**

See *perusals*

(q) Medical

A clerk's attendance will be allowed both to make appointments with doctors and to pay doctor's accounts.

(r) Perusals

Because the rules relating to charging for perusals vary between jurisdictions the following charges will be allowed for perusal of documents including letters in all jurisdictions:

Under 2 folios - nil

2-10 folios - per folio

over 10 folios - attendance to read

(s) Photocopying

Attendances to photocopy will not be allowed.

(t) Research

Research of the law by a solicitor would not normally be allowed except in exceptional cases where for instance it is of an area of law which a competent solicitor practicing in the jurisdiction practiced by the claimant would not be expected to have knowledge of. Otherwise prior authority should be obtained from the Commission.

(u) Re-Taxation

The costs review committee has considered many objections to the Commission re-taxing bills that have already been the subject of taxation in the Family Court. The committee considers re-taxation is not only desirable but essential for the Commission to fulfil its legal duty. A copy of the detailed reasons is available on request.

(v) Solicitor Instructing Counsel

Aid for a solicitor to instruct counsel in court would not normally be granted whether for trial or plea of guilty and certainly not without prior approval of the Commission.

(w) Swearing

No charge will be allowed for a solicitor to have the client swear an affidavit in front of the solicitor (in a Family Court matter) nor for the attendance by a solicitor while the client reads through the affidavit prior to its swearing.

(x) Telephone Calls

Will not be allowed as attendances, whether outgoing or incoming, where the caller does not reach the party sought, whether or not a message is left, unless information is conveyed which has advanced the matter.

See [clerical attendances](#)

(y) Travelling Time

Time spent travelling to a city court from a solicitor's office will not be allowed except where the solicitor's office is more than 5 kilometres from the court and the firm has no office within 5 kilometres of the court. Counsel is allowed travel time where chambers are more than 5 kilometres from the court, but at solicitors rates.

See [Appendix A Scale of Fees](#)

(z) Tribunals, Administrative Appeals, Industrial Relations Court etc

Appearances before the [Administrative Appeals Tribunal](#), the [Workers Rehabilitation and Compensation Tribunal](#) and the [Industrial Relations Court](#) save for formal or directions hearings, and the preparation for such, will normally be allowed at counsels rate unless otherwise noted by the Commission upon

granting aid. For other tribunals the guidelines relating to [Inquests](#), will apply.

(aa) **Witnesses**

Telephone calls solely to make appointments will not be allowed but a clerk's attendance will be allowed to telephone a witness to arrange for attendance in court.

See [clerical attendances](#)

(bb) **Workers Compensation**

The appropriate scale is that in [Appendix A Scale of Fees](#). See [Tribunals, Administrative Appeals, Industrial Relations Court etc](#) as to whether counsels or solicitors rates apply.

Guideline 9 - Fees

(1) Scale of Fees for Practitioners

(a) Supreme Court, Federal Court, Family Court, Administrative Appeals Tribunal

Hourly Rate

Counsel	\$173.19
Solicitor	\$154.54
Travelling time	\$154.54

(b) Magistrates Court

Hourly Rate

Counsel	\$154.54
Solicitor	\$154.54

(c) Travel

- (i) Travelling costs to Court will only be paid where the practitioner has office premises 5 kilometres or more from the Court to be attended, and where an appearance is required in a Court in a town other than where the practitioner has office premises, only with the prior consent of the Commission.
- (ii) Travel over a distance of 40 kilometres will not be paid on any non-Court attendance unless prior consent of the Commission has been obtained.
- (iii) Mileage for car expenses will be paid at the rate of 43.30 cents per kilometre.

(2) In Globo Fees

- (a) The Commission is presently committed to the concept of "in globo" fees. It is of the view that the advantages of such fees outweigh the disadvantages. The advantages are seen to be as follows:
- (i) The amount of administration necessary to process accounts is minimal. The reduction in costs achieved frees further funds for use in grants of aid.
 - (ii) Accounts are processed faster - this Commission already sets the national benchmark in this area. Faster processing will result in faster payments to the profession.
 - (iii) The Commission is able to more accurately determine its future liability and therefore efficiently plan the future use of its financial resources.
 - (iv) The practitioner is informed at the outset of the matter as to the remuneration to be received thus minimising the administrative burden inherent in recording work, drawing bills, etc. Further, the possibility of later dispute is significantly reduced which is both time saving and cost efficient.
- (b) The Commission is conscious of the criticisms of an "in globo" fees structure. The assertion that the foundation of such schemes must be an average cost of trials is flawed, since most matters do not proceed to trial and the following scheme is far more flexible.
- (c) The Commission believes that the "swings and roundabouts" approach overcomes most other objections. This approach is based on the Commission's experience of some 20,000 plus grants of aid since its inception that approximately 80% of cases are "run of the mill" and these more than make up for the 20% which take an unexpected turn.
- (d) This approach means, of course, that the practitioner is paid the fixed fee whether the work is completed or not. This may render the Commission subject to criticism on the ground that as a publicly funded body it should not remunerate for services not actually provided. Again, the Commission believes that the "swings and roundabouts" approach makes this criticism much less compelling.
- (e) Finally the Commission seeks to allay any concerns that this scheme would lead to lower standards of work from practitioners who would seek to cut corners to see a matter resolved when the "in globo" fee has been exhausted. The Commission is of the view that such criticisms are only valid where the fee is set too low. The fee structure has been arrived at after extensive discussion and analysis of the procedures of the Court. The Commission is confident that the fee structure represents an adequate level of remuneration for experienced and efficient practitioners.

Please refer to the Work Item and Fee Scale Guide which underpins this fee structure. It is available on the Legal Aid website and sits alongside these Guidelines.