

Chapter 6

Means Test

Part 1

General

The Means Test is based on a model that has been developed by all Legal Aid Commissions in Australia. It should be read in conjunction with the Schedules.

Schedule A to Chapter 6 sets out the benchmark indicators for determining eligibility thresholds in the Northern Territory.

Schedule B to Chapter 6 sets out the current benchmark amounts for the Northern Territory Legal Aid Commission as at 1 July 2005.

To be financially eligible for legal assistance an applicant must satisfy both the income and assets tests. Subject to all the provisions of the Means Test, an applicant will be financially eligible for legal assistance if his/her total contribution is less than the estimated cost of the proceedings which are the subject of the application for legal assistance.

The Means Test consists of:

1. Income Test;
2. Assets Test;
3. General Discretionary Matters;
4. Likely Cost of Matters;
5. Children;
6. Benchmark Indicators (see Schedules A and B).

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

1. Definition of Income

The income of an applicant for assistance is the weekly income, from all sources, of the applicant and any financially associated person. Income is calculated nett of business overhead/expenses reasonably incurred.

Note: Such overhead/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 1936.

2. Definition of 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 includes the income of any financially associated person who is living in a financially supportive relationship with the applicant *unless*:

- (i) they are separated;
- (ii) the financially associated person has a contrary interest in the matter for which legal assistance is sought;
- (iii) disclosure of the legal problem may damage the relationship; or
- (iv) there are other special reasons why the income of the financially associated person should be disregarded;

less all allowable deductions.

This is the assessable or net income for the purposes of the means test.

3. Definition of Financially Associated Person

In the Means Test a **financially associated person** includes a person:

- (a) from whom the applicant usually receives financial support; or
- (b) to whom the applicant usually provides financial support; or
- (c) who would be likely to financially assist the applicant in obtaining legal services.

“Person” may include a relative, partner, spouse, guardian, corporation, trust, group or other financially associated entity whether legally constituted or not.

4. Allowable Deductions

The following allowances should be deducted from the applicant's income:

- (a) Income tax, including Medicare levy;
- (b) Weekly housing cost, being rent, or mortgage plus rates, as set out in Schedule B;
- (c) Childcare costs necessarily incurred to enable the applicant or other person whose income is included in the assessable income to work or study, to a maximum as set out in Schedule B;
- (d) Dependant allowance as set out in Schedule B. A dependant allowance should be deducted for any dependant children and for a financially associated person; and
- (e) Maintenance payments up to the amount of the appropriate dependant allowance as set out in Schedule B.

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

1. Assessable Assets

The assessable assets of an applicant are the total assets of the applicant and any financially associated person who is living in a financially supportive relationship with the applicant *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;

less excluded assets.

2. Excluded Assets

The following assets are 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 Schedule B;

- (e) Equity in the principal 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 Schedule B;
- (f) The equity in a farm or business which provides the applicant's main source of income up to the maximum set out in Schedule B;
- (g) In certain circumstances, as the Director shall determine, lump sum payments such as compensation or superannuation upon retrenchment or resignation in hand where neither the applicant nor any financially associated person is working and where the person to whom the compensation was paid is not entitled to receive 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 Social Security benefit it should be assessed as an asset.

3. 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.

4. Discretion to Disregard Home Equity of Aged Applicants

Where an applicant is ineligible for assistance due to excess equity in accommodation and is:

- (a) aged over 60 years; and
- (b) in receipt of an income tested pension or benefit; and
- (c) who 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 Director may in his/her absolute discretion disregard that excess equity.

5. Assets for Which Ownership is in Dispute

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.

An asset, apparently owned by the applicant or other 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 other person satisfies the Commission that he/she is not the owner of the asset.

6. Debts

Debts are not allowable as a set off against assets unless they are secured against specific assets by a registerable instrument or unless, in the absolute discretion of the Director, there are exceptional reasons for taking them into account.

7. Assets Allowance

Without taking into account excluded assets, an applicant may have assets up to the maximum value set out in Schedule B and still be eligible for legal assistance provided the income test is also satisfied.

1. 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.

2. 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 e.g. from trust funds.

3. Discretionary Trusts

The Commission will consider the trust structure and if it finds that the trust is not genuine such that the applicant retains effective control or the trustee is providing financial support to the applicant or will probably provide it upon request, the assets of the trust will be assessed in accordance with the criteria of the means test.

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.

Where there is no direct evidence that the applicant 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.

4.

Lifestyle Guideline

Where available information suggests that an applicant's lifestyle, activities or interests are such that in the opinion of the Director 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 may be refused.

5.

Corporations, Associations and Groups

Where the applicant seeking legal aid is a group then the means to be considered are the means of the group.

In considering the means of the applicant/group, regard will 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.

In considering the means of the applicant/group, regard will 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.

The likely cost of proceedings for which legal assistance is sought is the cost reasonably determined by the Director.

The level of contribution is set out in Tables A and B (as Schedules A and B to Chapter 7). Category 1 contains matters which in the opinion of the Director are likely to cost less than \$830. Category 2 contains matters likely to cost between \$830 and \$3,135 and Category 3, matters likely to cost more than \$3,135.

Children, whether or not supported by a parent or guardian, are not subjected to the means test.

However, where the Commission appoints a child representative, pursuant to an order of the Federal Magistrates Service or Family Court, the Commission may require the parents to contribute to the costs of the child representative. The child representative may seek a court order to this effect in appropriate cases.

1. Income Test**(a) Net Income**

The generic benchmark currently applied by NTLAC for net weekly income is 110% of the Henderson Poverty Line 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 is the cost of a 2 bedroom flat in Darwin.

(c) Childcare Costs

The generic benchmark for determining the maximum deduction allowable for child care, for a non school child, as set out in "A Guide to Australian Government Payments" is calculated at the rate of \$140.50 for a maximum of 50 hours per week.

(d) Dependant Allowance

The generic benchmark for determining the first dependant allowance is the difference between the selected percentage of the Henderson Poverty Line figures contained in Table 1 of the Henderson Poverty Line Tables using "Head in Workforce, Cost other than Housing, Single Parent plus one" and "Head in Workforce, Cost other than Housing, Single Person".

The benchmark for determining the second and subsequent dependant allowance is the difference between the selected percentage of the Henderson Poverty Line figures contained in Table 1 of the Henderson Poverty Line Tables using "Head in Workforce, Cost other than Housing, Single Parent plus two" and "Head in Workforce, Cost other than Housing, Single Parent plus one".

(a) Equity in Housing/Principal Home

The allowable equity in housing is the median price of a two bedroom flat in Darwin.

(b) Equity in a Farm or Business

The generic benchmark for equity in a farm or business is the assets test used by the Department of Social Security in the assessment of eligibility for a full benefit or allowance. This is broken down into the following categories:

- 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 includes the value of the remaining land and other assets, up to the limit as determined by the Department of Social Security from time to time.
- 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 or Commonwealth legislation, after deduction of the value of the home and surrounding five (5) acres of land, the assets test includes the value of the remaining land and other assets, up to the limit as determined by the Department of Social Security from time to time.

(c) Equity in Motor Vehicles

The generic benchmark for total maximum motor vehicle equity is the average price in the Northern Territory of a 5 year old 6 cylinder family car.

(d) Allowable Assets

The original benchmark figures for allowable assets in 1999 were \$750 for a single person and \$1,500 for a person with dependants. The formula for updating this figure is the weighted average of the CPI/AWE in accordance with Commission Funding Agreements. As at 1st November 2004, the figures are \$879 for a single applicant and \$1,758 for an applicant with dependants.

Schedule B

Benchmark Amounts

As at 1 July 2005

INCOME TEST

Net Weekly Income	\$232.00
Housing Costs	\$190.00
Childcare Costs	\$170.00
Dependant Allowance	\$80.00 for first dependant \$75.00 subsequent dependants
Maintenance Payments	Amounts actually paid up to amount of appropriate dependant allowance

ASSETS TEST

Equity in housing/principal home	\$190,000.00
Equity in a farm or business	
• Single home owner	\$153,000.00
• Single non-home owner	\$263,500.00
• Married home owner	\$217,500.00
• Married non-home owner	\$328,000.00
Total equity in motor vehicles	\$13,000.00
Allowable Assets	
• Single applicant	\$879.00
• Applicant with dependants	\$1,758.00