



Legal Aid: What is it? How does it work?

This fact sheet summarises the Ask LOIS webinar on this topic, presented by Janet Loughman, Principal Solicitor, Women's Legal Services NSW on 13 February 2013. This webinar can be downloaded for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

- What Legal Aid is
- The relationship between Legal Aid, private solicitors and CLCs in providing legal aid
- Who is eligible for Legal Aid
- How to apply for Legal Aid
- What your client can do if they are not eligible

What is Legal Aid?

Legal Aid can refer to:

- The large state wide organisation called **Legal Aid NSW**
- The '**legal aid system**', which is a partnership between Legal Aid NSW, private solicitors, community legal centres (CLCs), Aboriginal legal services, LawAccess and others, formed to deliver legal services to disadvantaged communities
- A '**grant of legal aid**', which is money provided by Legal Aid NSW to pay for your lawyer

What is Legal Aid NSW?

Legal Aid NSW:

- The large state wide government body that is the main provider of legal aid services
- Funded by state and federal government and the Public Purpose Fund (PPF)
- Employs about 900 people, both salaried lawyers and other staff
- Main role is to help disadvantaged people with cases in court in criminal cases (50%), family law cases (30%) and civil law cases (12%)
- Has specialist services such as the Child Support Service, to help parents with child support, and the Mental Health Advocacy Service, to help people with mental illness before the Mental Health Review Tribunal, and the Youth Hotline offering free legal advice for people under 18yo
- Has its head office in Sydney with 21 regional offices

What is the difference between Legal Aid and CLCs?

Community Legal Centres:

- Independent community organisations
- There are 40 CLCs in NSW (including Women's Legal Services NSW)
- Provide free advice and casework and also do community legal education and law reform work
- Have close engagement with their communities to work strategically to improve access to justice
- Like Legal Aid, CLCs receive funding from the state and federal government and the Public Purpose Fund (PPF), but their resources are very limited
- Often assisted by volunteers
- Generalist CLCs service a specific geographic community or locality across a range of legal issues
- Specialist CLCs service clients from various locations with cases in a particular area of law or who fall within a particular group (e.g., Women's Legal Services NSW)
- Aim to complement not duplicate each others work
- Take on clients who are disadvantaged, or whose cases have broader public interest



LawAccess NSW

- Government organisation run by NSW Department of Attorney General and Justice
- A telephone service providing free legal information and, in some cases, free legal advice from a solicitor
 - o Telephone: 1300 888 529
 - o Website: <http://www.lawaccess.nsw.gov.au>

What is Pro Bono?

- *Pro Bono Publico*: for the public good
- This is the term used to refer to the work that some private lawyers do for free
- The Law Society of NSW and the NSW Bar Association both run pro bono schemes
- Some large commercial firms also have 'pro bono practices' through which they provide free legal work for disadvantaged clients
- Pro bono work does not duplicate the work of Legal Aid NSW, but rather it can help when legal aid is not available
- CLCs are often the gateway to pro bono services, as they recommend clients who they may not have the resources to assist themselves through to these services

Conflict of Interest with Legal Aid NSW

- A lawyer cannot represent both sides of a case, as this would be a conflict of interest
- Nor can they act in other situations that may result in a conflict of interest, such as acting against a past client
- However, if Legal Aid NSW cannot represent you due to a conflict of interest, you can still apply to them and they will provide a grant of legal aid to a private solicitor to represent you if you are eligible for assistance

How to apply for legal aid?

- You must fill out an application form
- This can be quite complicated, so you can seek assistance from
 - o A Legal Aid NSW office
 - o A private solicitor who does legal aid work
 - o LawAccess NSW
 - o A CLC

Who gets Legal Aid?

There are FOUR TESTS to determine eligibility for Legal Aid:

Jurisdiction Test:

- This requires that the case fall within the jurisdiction and area of law covered by Legal Aid

Means Test:

- This is the legal aid income and assets test
- It does take into account things such as your housing costs, childcare costs and debts that you are paying off



- To find out if your client satisfies the Means Test, they can use Legal Aid's 'Means Test Indicator' at <http://laxextra.legalaid.nsw.gov.au/meanstestindicator/>
- Note that there is some discretion if you are just over the Means Test requirements

Merits Test:

- This test does not apply for every matter
- It is an assessment of whether an applicant's case has a reasonable prospect of success
- Merits Test A applies in civil and criminal matters and State family law matters
- Merits Test B applies in Commonwealth family law matters
- This is the test for which your client may especially need assistance in completing their application

Availability of Funds Test:

- Legal Aid NSW must consider whether it has sufficient funds to take on the matter, taking competing priorities into account

Is Legal Aid free?

- Legal Aid is sometimes free, but **not in all cases**
- Most people will have to pay a **minimum \$75 contribution**, varying upwards depending on the type of matter and the information received for the Means Test
- Some clients will have to repay their Legal Aid costs in part or in full, particularly in cases involving compensation pay outs
- These contributions can be varied or waived

What can your client do if they are found ineligible?

- If your client's application is unsuccessful, they can appeal to the **Legal Aid Review Committee (LARC)** to have this decision reviewed
- This must be done within **28 days** of their application for Legal Aid being denied
- It is useful if your client can receive assistance and advocacy to support their appeal

Collaboration

- Legal Aid NSW supports the different legal services in the legal aid system through a regional cooperative and strategic network called the **Cooperative Legal Service Delivery Program (CLSD)**
- This program aims to improve access to justice for economically and socially disadvantaged people

Resources

Legal Aid

<http://www.legalaid.nsw.gov.au>

Community Legal Centres NSW

<http://www.clcnsw.org.au>

LawAccess

<http://www.lawaccess.nsw.gov.au>

Also, see further Ask LOIS webinars on legal aid for particular kinds of cases

www.asklois.org.au/webinars/past-webinars