

Current policy

Legal aid is available for criminal proceedings in the [Local Court](#) in the following circumstances.

4.3.1 Court attendance notice issued by a police officer or Centrelink

Legal aid is available for criminal proceedings in the [Local Court](#) (except traffic offences) which are commenced by a court attendance notice issued by a police officer or Centrelink.

For legal aid to be granted in these matters the following tests must be satisfied:

- the applicant meets the [Means Test](#)
- the matter meets the [Availability of Funds Test](#), and

either

- the offence carries a [term of imprisonment](#) as an available penalty, or
- there are [exceptional circumstances](#).

See criminal law policy 4.3.4 for policy relating to traffic offences.

4.3.2 Court attendance notice issued by a person other than a police officer or Centrelink

Legal aid is available for criminal proceedings in the [Local Court](#) which are commenced by a court attendance notice issued by a person other than a police officer or Centrelink.

For legal aid to be granted in these matters the following tests must be satisfied:

- the applicant meets the [Means Test](#)
- the matter meets the [Availability of Funds Test](#), and

either

- there is a real possibility of a [term of imprisonment](#) being imposed, or
- there are [exceptional circumstances](#)

Proposed Policy

Option 1

Legal aid is available for criminal proceedings in the Local Court according to existing policies, but for defended hearings legal aid is available as follows:

4.3.1 Court attendance notice issued by a police officer or Centrelink

Legal aid is available for criminal proceedings in the Local Court (except traffic offences) which are commenced by a court attendance notice issued by a police officer or Centrelink.

For legal aid to be granted in these matters the following tests must be satisfied:

- the applicant meets the [Means Test](#)
- the matter meets the [Availability of Funds Test](#), and

either

- there is a real possibility a conviction would result in a term of imprisonment,
- there are [exceptional circumstances](#),

What may constitute exceptional circumstances is set out in the Criminal Law Guideline 1.13 (Attachment "F").

Note: The definition of a 'term of imprisonment' includes:

- a full-time gaol term
- a suspended sentence (section 12 good behaviour bond)
- an intensive correction order, or
- a home detention order, or
- a community service order.

4.3.2 Court attendance notice issued by a person other than a police officer or Centrelink

Legal aid is available for criminal proceedings in the [Local Court](#) which are commenced by a court attendance notice issued by a person other than a police officer or Centrelink.

For legal aid to be granted in these matters the following tests must be satisfied:

- the applicant meets the [Means Test](#)
- the matter meets the [Availability of Funds Test](#), and

either

- there is a real possibility of a [term of imprisonment](#) being imposed, or
- there are [exceptional circumstances](#)

What may constitute exceptional circumstances is set out in the Criminal Law Guideline 1.13 (Attachment "F").

Note: The definition of a 'term of imprisonment' includes:

- a full-time gaol term
- a suspended sentence (section 12 good behaviour bond)
- an intensive correction order, or
- a home detention order or
- a community service order

Current Criminal Law Guideline on exceptional circumstances

1.13. Exceptional circumstances

Exceptional circumstances under this policy **may** include (but is not limited to) where the matter raises an issue of civil liberties or where an applicant is at special disadvantage.

An applicant is at special disadvantage if:

- the applicant is a child or acting on behalf of a child; or
- they are a person who has substantial difficulty in dealing with the legal system by reason of a:
 - psychiatric condition
 - developmental disability
 - intellectual disability, or
 - physical disability.

Proposed Criminal Law Guideline on exceptional circumstances

1.13. Exceptional circumstances

Exceptional circumstances under this policy **may** include (but is not limited to) where the matter raises an issue of civil liberties or where an applicant is at special disadvantage.

An applicant is at special disadvantage if:

- the applicant is a child or acting on behalf of a child; or
- they are a person who has substantial difficulty in dealing with the legal system by reason of a **substantial**:
 - psychiatric condition
 - developmental disability
 - intellectual disability, or
 - physical disability.