This document is to be used by Private Lawyers to inform decision making about applications for legal aid where their client is commencing litigation in the Federal Court and Family Court of Australia.

**Client name**: Click or tap here to enter text.

# Merit test

The [merit test](https://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/8.-merit-test/8.2.-merit-test-a-state-matters) is a threshold test which must be satisfied in Commonwealth family law matters.

The merit test asks *“whether it is reasonable in all the circumstances to grant legal aid”.*

In deciding whether it is reasonable in all the circumstances to grant legal aid, Legal Aid NSW will take into account amongst other issues:

* The nature and extent of:
  + Any benefit that the applicant might expect to gain by receiving legal aid, or
  + Any disadvantage or harm to the applicant that might result from being refused legal aid, *and*
* Whether the applicant has reasonable prospects of success.

# Documents which may be considered for this determination

Recommendation of the Mediator

Copy of Initiating Application and/or Response

# Merit determination checklist

## **Checklist of evidence and issues considered:**

The key issues still in dispute between the parties

The orders sought by the parties

## **Checklist of other considerations:**

The benefits of granting legal aid

The disadvantages or harm of refusing legal aid

Whether, having considered the evidence, the case has reasonable prospects of success

Any other relevant consideration

# Overall merit determination

It is reasonable in all the circumstances to grant legal aid

***OR***

It is not reasonable in all the circumstances to grant legal aid