

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S PORTFOLIO

**Group: 2**

**Program: 1.4**

**Question No. BE15/026**

**Senator Bilyk asked the following question at the hearing on 27 and 28 May 2015:**

Senator BILYK: I want to quickly ask one more question with regard to native title claims. Farmers are allowed to apply for this money. There are five industry bodies that you mentioned. Are mining companies and wealthy individuals able to oppose native title claim and apply for this money? Is it means-tested?

Ms Quinn: The way the scheme operates is that, where respondents apply as a group, a means test is not applied. That is about creating an incentive for respondents to group together to make the entire process smoother. If a particular individual was applying in their individual capacity, yes, we would have a look at their means.

Senator BILYK: Can you tell me what that means test might be?

Ms Quinn: It is not a means test per se but it would be an assessment of whether they would struggle to pay their own legal fees.

Senator BILYK: How would that determination be made though? Is there a set of criteria against which you would ask these individuals?

Ms Quinn: We would need to have a look at it. It would be a case-by-case assessment, but I think it very rarely happens. I am happy to check whether it has, in fact, ever happened. I am only aware—

Senator BILYK: Can you check if there is a set of criterion and specific questions that people might be asked with regard to that—

Ms Quinn: There is not a formula, so there is not a benchmark in terms of 'you're in' or 'you're out' like a formal means test, but there would be an assessment of a person's ability to pay.

Senator BILYK: Who would make that judgement?

Ms Quinn: The delegate; the person who is authorised to be the decision maker on the grant. As I said, I am not even sure that it has ever happened. I am only aware of groups of—

Senator BILYK: But there is the potential for it to happen?

Ms Quinn: Yes.

Senator BILYK: Individuals can apply?

Ms Quinn: If they were a respondent, yes.

**The answer to the honourable senator’s question is as follows:**

Assistance for legal representation and disbursement costs is administered under the *Native Title (Assistance from Attorney-General) Guideline 2012*. Under section 4.5 (3) the decision maker must take into account the ‘applicant considerations’ unless the applicant is a group. These applicant considerations include the financial circumstances of the applicant.

The applicant considerations are set below:

**Subdivision A—Applicant considerations**

**4.8 What are the applicant considerations?**

- (1) For Divisions 3 and 4, the *applicant considerations* are an assessment of whether the applicant has the means to meet the cost of the legal action without incurring serious financial difficulty having regard to the financial circumstances of the applicant.
- (2) The *financial circumstances* of the applicant include, but are not limited to, the following:
  - (a) the applicant’s income;
  - (b) the applicant’s assets (including whether the applicant is able to sell assets, or to secure a loan against the assets);
  - (c) the applicant’s liabilities;
  - (d) the applicant’s expenses;
  - (e) the applicant’s style or standard of living;
  - (f) the income of a financially-associated entity of the applicant;
  - (g) the assets of a financially-associated entity of the applicant.