

**Reprint  
as at 12 November 2018**



## **Legal Services Act 2011**

Public Act      2011 No 4  
Date of assent      11 April 2011  
Commencement      see section 2

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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice.**

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**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Legal Services Act 2011.

**2 Commencement**

This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions.

Section 2: this Act (except sections 9, 18(7)(g), 21(7), and 114(1)(s), (t), and (u)) brought into force, on 1 July 2011, by clause 2 of the Legal Services Act 2011 Commencement Order 2011 (SR 2011/143).

**Part 1****Preliminary provisions****3 Purpose of Act**

The purpose of this Act is to promote access to justice by establishing a system that—

- (a) provides legal services to people of insufficient means; and
- (b) delivers those services in the most effective and efficient manner.

**4 Interpretation**

(1) In this Act, unless the context otherwise requires,—

**aided person**—

- (a) means a person who is granted legal aid under this Act or the former Act; and
- (b) includes—
  - (i) a person who is granted legal aid on an interim basis;
  - (ii) a person whose grant of legal aid has been withdrawn under section 30

**auditor** means a person employed or appointed by the Secretary for the purpose of conducting examinations or audits, or both

**capital**, in relation to a person, means that person's capital—

- (a) as defined in Schedule 1; or
- (b) as defined in regulations if the person is charged with or convicted of a prescribed offence



**civil proceedings** includes—

- (a) proceedings under the Marriage Act 1955, the Adoption Act 1955, the Domestic Actions Act 1975, the Property (Relationships) Act 1976, the Family Proceedings Act 1980, the Domestic Violence Act 1995, the Care of Children Act 2004, or subparts 5, 7, 8, and 9 of Part 1 of the Weathertight Homes Resolution Services Act 2006; and
- (b) proceedings under the Oranga Tamariki Act 1989, other than proceedings in respect of an offence; and
- (c) despite paragraph (b), proceedings under Part 2 of the Oranga Tamariki Act 1989 on the ground specified in section 14(1)(e) of that Act

**Commissioner** means the Legal Services Commissioner appointed under section 70

**community legal services** means any 1 or more of the following services that a community law centre provides under a contract between the centre and the Secretary:

- (a) legal services;
- (b) law reform and advocacy work

**cost of services** means the sum of the following:

- (a) the fees of, or charges attributable to, the lead provider, as approved for payment under section 99 or prescribed by regulations; and
- (b) the fees of, or charges attributable to, any other provider who acted on the matter, as approved for payment under section 99 or prescribed by regulations; and
- (c) the disbursements claimed by the lead provider and any other provider who acted on the matter, as approved for payment under section 99

**criminal proceedings** includes—

- (a) proceedings on an application made under any of section 54, 68, or 121 of the Sentencing Act 2002;
- (b) proceedings before a District Court Judge under sections 88 to 88AG of the Summary Proceedings Act 1957;
- (c) proceedings for contempt under section 163 of the District Court Act 2016;
- (d) proceedings before a District Court Judge under the Extradition Act 1999 relating to the surrender to a foreign country of the person to whom the proceedings relate

**disposable capital**, in relation to a person, means that person's disposable capital—

- (a) as defined in Schedule 1; or

- (b) as defined in regulations if the person is charged with or convicted of a prescribed offence

**former Act** means the Legal Services Act 2000

**grant of legal aid**, and any similar expression, means a grant of legal aid under this Act, the former Act, or the Legal Services Act 1991; and includes any amendments to that grant

**income**, in relation to a person, means that person's income—

- (a) as defined in Schedule 1; or  
(b) as defined in regulations if the person is charged with or convicted of a prescribed offence

**interim repayment** means the amount that an aided person is required to pay to the Commissioner under section 18(1) as a condition of a grant of legal aid

**lawyer** has the meaning given to it in section 6 of the Lawyers and Conveyancers Act 2006

**lead provider**, in relation to a grant of legal aid, means the provider identified in the grant as the lead provider for that matter

**legal aid services** means legal advice and representation (in relation to legal aid) described in paragraph (a) of the definition of legal services

**legal services**,—

- (a) in relation to legal aid, means legal advice and representation and, subject to subsection (2), includes assistance—
- (i) with resolving disputes other than by legal proceedings; and
  - (ii) with taking steps that are preliminary to any proceedings; and
  - (iii) with taking steps that are incidental to any proceedings; and
  - (iv) in arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings:
- (b) in relation to anything other than legal aid, includes—
- (i) legal advice and representation (including the kinds of assistance described in subparagraphs (i) to (iv) of paragraph (a)); and
  - (ii) the provision of legal information and law-related education

**Legal Services Agency** means the Legal Services Agency established under the former Act

**maximum grant** means the maximum amount of legal aid granted under a grant of legal aid

**mentally disordered** has the same meaning as it has in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992

**Minister** means the Minister of Justice

**Ministry** means the Ministry of Justice

**offender**, in relation to a victim, means a person convicted of the crime or offence that affected the victim

**practice standards** means standards approved by the Secretary that relate to the delivery and provision of legal aid services and specified legal services

**prescribed manner** means the manner prescribed by the Secretary

**prescribed offence** means an offence prescribed in regulations for the purposes of section 9

**prescribed repayment amount** is the amount, based on income and capital, set by regulations for the purposes of sections 20(1) and 21

**proceeds of proceedings**, in relation to civil proceedings for which legal aid has been granted, means—

- (a) any money or property to which the aided person is entitled under a judgment or out-of-court settlement relating to the proceedings; and
- (b) any costs awarded or payable to the aided person under a judgment or out-of-court settlement relating to the proceedings

**property** includes real and personal property, any estate or interest in any real or personal property, and any debt, thing in action, and any other right or interest

**proposed care recipient** has the meaning given to it in section 6(4) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

**proposed patient** has the meaning given to it in section 2A of the Mental Health (Compulsory Assessment and Treatment) Act 1992

**provider** means a person who is approved by the Secretary to provide legal aid services, or specified legal services, or both

**regulations** means regulations made under this Act

**repayment** means the amount of money that an aided person is required to pay to the Commissioner under section 18(2) as a condition of a grant of legal aid

**Secretary** means the Secretary for Justice

**Special Fund** means the Lawyers and Conveyancers Special Fund continued by section 289(1) of the Lawyers and Conveyancers Act 2006

**specified application** means an application for legal aid made—

- (a) under section 47 in respect of certain proceedings before the Waitangi Tribunal; or
- (b) by a patient or proposed patient in respect of proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (c) by a care recipient or proposed care recipient in respect of proceedings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or

- (ca) by a person who is a respondent to an application under the Public Safety (Public Protection Orders) Act 2014, or who is subject to an order under that Act, in respect of an application under that Act; or
- (d) in respect of proceedings under the Protection of Personal and Property Rights Act 1988; or
- (e) by a victim in respect of—
  - (i) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; or
  - (ii) a hearing of the New Zealand Parole Board (other than one in a proceeding specified in section 6(c)(i)) that concerns an offender and is a hearing at which the victim may appear as of right or with the Board's leave; or
  - (iii) any victims' claims proceedings; or
- (f) to enable—
  - (i) a person to apply for a protection order under Part 2 of the Domestic Violence Act 1995, or an order relating to property under Part 3 of that Act; or
  - (ii) a person who has applied for an order described in subparagraph (i) to appeal, or respond to an appeal, against the determination of the person's application; or
- (g) in respect of a proceeding under Part 2 or 3A of the Oranga Tamariki Act 1989; or
- (h) in respect of a proceeding that is specified in section 7(1)(j) to (n) and that involves, or is connected with, the recognition of a person as a refugee or protected person

**specified legal services** means legal services specified by the Secretary under section 68(2)(b)

**Tribunal** means the Legal Aid Tribunal established under section 62

**user charge** means the amount that aided persons are required to pay by section 18A

**victim**—

- (a) means—
  - (i) a person against whom an offence is committed by another person; and
  - (ii) a person who, through, or by means of, an offence committed by another person, suffers physical injury or loss of, or damage to, property; and
  - (iii) a parent or legal guardian of a child, or of a young person, who falls within subparagraph (i) or (ii), unless that parent or guardian

- is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and
- (iv) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and
  - (b) despite paragraph (a), if an offence is committed by a person, does not include another person charged (whether as a principal or party or accessory after the fact or otherwise) with the commission of, or convicted or found guilty of, or who pleads guilty to,—
    - (i) that offence; or
    - (ii) an offence relating to the same incident or series of incidents as that crime or offence

**victims' claims proceedings** means proceedings of the kind specified in section 7(1)(r).

- (2) The assistance described in subparagraphs (i), (iii), and (iv) of paragraph (a) of the definition of legal services in subsection (1) does not apply to legal aid for proceedings before the Waitangi Tribunal.
- (3) For the purposes of the definitions of offender and victim in subsection (1), the terms **child**, **immediate family**, **incapable**, **offence**, and **young person** have the meanings given to them in section 4 of the Victims' Rights Act 2002.
- (4) In this Act, a reference to an application by a person or a grant to a person includes a reference to an application made by one person on behalf of another, or a grant made in respect of a person other than the person to whom the grant is made.
- (5) In this Act, and in any regulations made under it, references to such things as fees, charges, disbursements, grants, and rates are references to those things exclusive of GST.

Compare: 2000 No 42 s 4(1)–(4)

Section 4(1) **civil proceedings** paragraph (b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 4(1) **civil proceedings** paragraph (c): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 4(1) **criminal proceedings** paragraph (b): amended, on 13 February 2012, by section 26 of the Summary Proceedings Amendment Act 2011 (2011 No 32).

Section 4(1) **criminal proceedings** paragraph (c): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 4(1) **prescribed repayment amount**: amended, on 2 September 2013, by section 4(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 4(1) **specified application**: inserted, on 2 September 2013, by section 4(2) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 4(1) **specified application** paragraph (ca): inserted, on 12 December 2014, by section 142(2) of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 4(1) **specified application** paragraph (g): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 4(1) **user charge**: inserted, on 2 September 2013, by section 4(2) of the Legal Services Amendment Act 2013 (2013 No 43).

## 5 Act binds the Crown

This Act binds the Crown.

## Part 2 Legal aid

### Subpart 1—When legal aid may be granted

## 6 Proceedings for which legal aid may be granted: criminal matters

Legal aid may be granted in respect of the following criminal matters:

- (a) criminal proceedings in the District Court, the Youth Court, the High Court, the Court of Appeal, or the Supreme Court:
- (b) appeals to the Judicial Committee of the Privy Council in criminal proceedings, where the Attorney-General certifies that a question of law of exceptional public importance is involved and that the grant of criminal legal aid is desirable in the public interest:
- (c) proceedings before the New Zealand Parole Board that—
  - (i) are held under section 27, 65, or 107 of the Parole Act 2002 (which relate to postponement orders, recall orders, and orders under section 107 of that Act); or
  - (ii) otherwise concern an offender who is entitled, under section 49(3)(c) of the Parole Act 2002, to be represented by counsel in the proceeding:
- (d) proceedings in the High Court on an application under section 68 of the Parole Act 2002 (which relates to appeals against postponement orders, section 107 orders, and final recall orders).

Compare: 2000 No 42 s 6

Section 6(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 6(c): replaced, on 2 September 2013, by section 5 of the Legal Services Amendment Act 2013 (2013 No 43).

Section 6(d): inserted, on 2 September 2013, by section 5 of the Legal Services Amendment Act 2013 (2013 No 43).

## 7 Proceedings for which legal aid may be granted: civil matters

- (1) Legal aid may be granted in respect of the following civil matters:

- (a) civil proceedings in the District Court or the Family Court:
- (b) civil proceedings in the High Court, the Court of Appeal, or the Supreme Court:
- (c) appeals to the Judicial Committee of the Privy Council in civil proceedings in any case where—
  - (i) the applicant has succeeded in the Court of Appeal and is the respondent in the appeal to the Privy Council, if the grant of aid is approved by the Minister; or
  - (ii) the Attorney-General certifies that a question of law of exceptional public importance is involved and that the grant of aid is desirable in the public interest:
- (d) proceedings commenced by way of application in the Youth Court under Part 7 of the Oranga Tamariki Act 1989 or in respect of any review of any determination of, or any order made in, the Youth Court in any such proceedings:
- (e) in any case where the Commissioner considers that the case is one that requires legal representation (having regard to the nature of the proceedings and to the applicant's personal interest) and considers that the applicant would suffer substantial hardship if aid were not granted, proceedings in—
  - (i) the Māori Land Court; or
  - (ii) the Māori Appellate Court; or
  - (iii) the Employment Court; or
  - (iv) the Employment Relations Authority; or
  - (v) any administrative tribunal or judicial authority (not being a tribunal or an authority in respect of any decision from which an appeal lies to any of the bodies referred to in any of paragraphs (f) to (j)):
- (f) proceedings before the Waitangi Tribunal:
- (g) proceedings before the Social Security Appeal Authority:
- (h) proceedings before the Tenancy Tribunal:
- (i) proceedings before a body established under section 63(1)(a)(i) of the Housing Restructuring and Tenancy Matters Act 1992 to hear appeals under section 62 of that Act:
- (ia) proceedings before any body established under the Housing Restructuring and Tenancy Matters Act 1992 to hear appeals under sections 132 to 135 of that Act or proceedings before any body established under that Act to hear appeals under sections 183 to 188 of that Act:
- (j) proceedings before the Immigration and Protection Tribunal, as established by the Immigration Act 2009, in respect of appeals against deci-

- sions to decline to grant recognition as a refugee or a protected person, or decisions to cease to recognise a person as a refugee or a protected person, as provided in sections 194(1) and 195 of that Act, or against liability for deportation arising under section 162 of that Act:
- (k) the processing, under Part 5 of the Immigration Act 2009, of any claim for recognition as a refugee or a protected person:
  - (l) any proceedings before the District Court or High Court following an application made under section 316 or 324 of the Immigration Act 2009:
  - (m) any appeal or review proceedings (as defined in section 4 of the Immigration Act 2009) in respect of proceedings or matters to which paragraph (j) or (k) applies:
  - (n) any proceedings or application under or in relation to the Immigration Act 1987 for which legal aid could have been granted under any of paragraphs (j), (k), (l), and (m) of section 7(1) of the Legal Services Act 2000 as in force before their repeal by the Immigration Act 2009:
  - (o) all applications, submissions, and appeals under the Resource Management Act 1991 or to the Environment Court under any other Act:
  - (p) all applications, submissions, and appeals to any Council or body in any case where an appeal in relation to its decision lies to the Environment Court:
  - (q) proceedings before the tribunal under the Weathertight Homes Resolution Services Act 2006:
  - (r) proceedings before a Tribunal under subpart 2 of Part 2 of the Prisoners' and Victims' Claims Act 2005 in respect of 1 or more victims' claims under that subpart.
- (2) To avoid any doubt, subsection (1)(e)(v) applies, without limitation, to the following proceedings:
- (a) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; and
  - (b) a hearing of the New Zealand Parole Board (other than one in a proceeding specified in section 6(c)(i)) that concerns an offender and is a hearing at which a victim may appear as of right or with the Board's leave.
- (3) Paragraphs (o) and (p) of subsection (1) do not restrict any other paragraph of that subsection.
- (3A) Despite subsection (1), legal aid is only available in proceedings under the Care of Children Act 2004 that are to be heard and determined in the Family Court if—
- (a) a lawyer is acting in the proceedings as permitted by any of the following sections of that Act:
    - (i) section 7A(2); or



- (ii) section 7A(4)(b)(ii) or (iii); or
    - (iii) section 7A(4)(c); or
    - (iv) section 7A(6); or
  - (b) a lawyer is acting in the proceedings as permitted by section 7A(4)(a) or (b)(i) of that Act, but the proceedings are not of a kind specified in subsection (3B); or
  - (c) a lawyer is providing legal advice to a party who—
    - (i) has indicated at a settlement conference an intention to consent to the making of an order settling 1 or more of the issues in dispute in the proceedings; and
    - (ii) has been advised by the Judge to obtain legal advice before that order is made.
- (3B) The kinds of proceedings referred to in subsection (3A)(b) are—
- (a) proceedings commenced by an application that—
    - (i) affects the applicant only; or
    - (ii) is in respect of a routine matter; or
    - (iii) is about a matter that does not affect the interests of any other person; or
  - (b) proceedings where every person in respect of whom the order is sought has either died or cannot be found.
- (4) Despite subsection (1), but subject to subsection (5)(e), legal aid is not available in proceedings under Part 4 of the Family Proceedings Act 1980 (which relates to proceedings relating to the status of marriage or civil union) unless the Commissioner is of the opinion—
- (a) that the unusual complexity of the case requires that the applicant be legally represented; or
  - (b) that the applicant would suffer substantial hardship if aid were not granted.
- (5) Despite subsection (1), legal aid is not available in any of the following proceedings:
- (a) relator actions;
  - (b) election petitions under the Electoral Act 1993;
  - (c) petitions for inquiry under the Local Electoral Act 2001;
  - (d) proceedings incidental to any proceedings mentioned in any of paragraphs (a) to (c);
  - (e) proceedings under section 37 of the Family Proceedings Act 1980 (which relates to the dissolution of marriage or civil union), or appeals in proceedings under that section:

- (f) any appeal to the Immigration and Protection Tribunal against a decision concerning a residence class visa under section 187 of the Immigration Act 2009 (or any appeal to the Residence Appeal Authority under section 18C of the Immigration Act 1987):
  - (g) any appeal to the Immigration and Protection Tribunal on humanitarian grounds against liability for deportation by a person liable for deportation under section 154 of the Immigration Act 2009 (or any appeal to the Removal Review Authority under Part 2 of the Immigration Act 1987):
  - (h) proceedings before a Commission of Inquiry under the Commissions of Inquiry Act 1908 (other than a Commission of Inquiry established or appointed by or under another enactment but deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908).
- (6) Subsections (3A) and (3B) do not apply in respect of any proceedings commenced under the Care of Children Act 2004 before the date of commencement of section 5 of the Care of Children Amendment Act (No 2) 2013.

Compare: 2000 No 42 s 7

Section 7(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 7(1)(d): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 7(1)(d): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 7(1)(ia): inserted, on 14 April 2014, by section 25 of the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act 2013 (2013 No 97).

Section 7(3A): inserted, on 31 March 2014, by section 4(1) of the Legal Services Amendment Act (No 2) 2013 (2013 No 81).

Section 7(3A): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 7(3B): inserted, on 31 March 2014, by section 4(1) of the Legal Services Amendment Act (No 2) 2013 (2013 No 81).

Section 7(6): inserted, on 31 March 2014, by section 4(2) of the Legal Services Amendment Act (No 2) 2013 (2013 No 81).

## **8 When legal aid may be granted: criminal matters**

- (1) The Commissioner may grant legal aid to an applicant in respect of proceedings to which section 6 applies (criminal matters) if—
- (a) the applicant is a natural person charged with or convicted of an offence; and
  - (b) it appears to the Commissioner that the applicant does not have sufficient means to enable him or her to obtain legal assistance; and
  - (c) either—
    - (i) the offence to which the application relates is punishable by a maximum term of imprisonment of 6 months or more; or

- (ii) it appears to the Commissioner that the interests of justice require that the applicant be granted legal aid.
- (2) When considering whether the interests of justice require that the applicant be granted legal aid, the Commissioner—
  - (a) must have regard to—
    - (i) whether the applicant has any previous conviction; and
    - (ii) whether the applicant is charged with or convicted of an offence punishable by imprisonment; and
    - (iii) whether there is a real likelihood that the applicant, if convicted, will be sentenced to imprisonment; and
    - (iv) whether the proceedings involve a substantial question of law; and
    - (v) whether there are complex factual, legal, or evidential matters that require the determination of a court; and
    - (vi) whether the applicant is able to understand the proceedings or present his or her own case, whether orally or in writing; and
    - (vii) in any proceeding to which section 6(c) applies, the consequences for the applicant if legal aid is not granted; and
    - (viii) in respect of an appeal, the grounds of the appeal; and
  - (b) may have regard to any other circumstances that, in the opinion of the Commissioner, are relevant.
- (3) When determining whether an applicant has sufficient means to enable him or her to obtain legal assistance, the Commissioner must, except as provided under section 9(1), have regard to the applicant's income and disposable capital as set out in Schedule 1.
- (4) Subsection (1)(c)(i) does not apply in respect of—
  - (a) an appeal; or
  - (b) a proceeding to which section 6(c) applies.
- (5) Despite subsection (1)(a), the Commissioner may not grant legal aid to a child or a young person (as those terms are defined in section 2(1) of the Oranga Tamariki Act 1989) in respect of any proceedings against that child or young person for an offence, if those proceedings are heard in the Youth Court.

Section 8(5): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 8(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **9 Prescribed offences**

- (1) If an applicant is charged with or convicted of a prescribed offence, the Commissioner must determine, in the manner set out in regulations, whether the

applicant has sufficient means to enable him or her to obtain legal assistance unless subsection (2) applies.

- (2) However, the Commissioner must determine or, if the case requires, redetermine the applicant's means in accordance with section 8(3) if—
  - (a) the Commissioner considers it possible that the cost of services for the grant may exceed the prescribed maximum grant:
  - (b) an application for an amendment to the grant is made that would result in the cost of services exceeding the prescribed maximum grant:
  - (c) the Commissioner considers that the cost of services exceeds the prescribed maximum grant:
  - (d) the Commissioner receives new information about the applicant's financial circumstances that would suggest that the applicant has sufficient means to enable him or her to obtain legal assistance:
  - (e) the application for the grant of legal aid is in respect of an appeal:
  - (f) any circumstances prescribed in regulations apply.
- (3) In this section, **prescribed maximum grant** means the maximum amount of legal aid prescribed in regulations that may be granted for a prescribed offence.
- (4) To avoid doubt, a redetermination under subsection (2) is not a new application for legal aid.

#### **10 When legal aid may be granted: civil matters**

- (1) The Commissioner must, subject to this section and sections 11 to 13, grant legal aid to an applicant in respect of proceedings to which section 7 applies (civil matters) if the applicant is—
  - (a) a natural person, whether resident in New Zealand or not; or
  - (b) a trustee corporation (as defined in section 2(1) of the Administration Act 1969) that applies for legal aid in connection with proceedings in which it is concerned in a representative, fiduciary, or official capacity.
- (2) The Commissioner must refuse to grant legal aid to an applicant whose income or disposable capital exceeds the relevant maximum level prescribed in regulations, unless the Commissioner is satisfied that there are special circumstances, having regard to—
  - (a) the likely cost of the proceedings to the applicant; and
  - (b) the applicant's ability to fund the proceedings if legal aid is not granted.
- (2A) However, in the case of an application that comes within any of paragraphs (b) to (d) and (f) to (h) of the definition of specified application in section 4(1), it is sufficient, for the purposes of subsection (2), if the Commissioner has regard to either paragraph (a) or (b) of that subsection.

- (3) The Commissioner must refuse to grant legal aid if the applicant has not shown that the applicant has reasonable grounds for taking or defending the proceedings or being a party to the proceedings.
- (3A) The Commissioner may, unless the interests of justice require otherwise, refuse to grant legal aid to an applicant if—
  - (a) any amount payable by the applicant in respect of a repayment of a previous grant of legal aid is in arrears; and
  - (b) the application made by the applicant does not come within any of paragraphs (b) to (d) and (f) to (h) of the definition of specified application in section 4(1).
- (4) The Commissioner may refuse to grant legal aid to an applicant in any of the following circumstances:
  - (a) the Commissioner is unable to obtain full information concerning the applicant's financial affairs because of the default or failure of the applicant:
  - (b) in the opinion of the Commissioner, the prescribed repayment amount will exceed the likely cost of the proceedings for which legal aid is sought:
  - (c) the applicant is not resident in New Zealand and the Commissioner considers that the proceedings might reasonably be brought in a jurisdiction other than New Zealand:
  - (d) in the case of original proceedings,—
    - (i) the applicant's prospects of success are not sufficient to justify the grant of legal aid; or
    - (ii) the grant of legal aid is not justified, having regard to the nature of the proceedings and the applicant's interest in them (financial or otherwise), in relation to the likely cost of the proceedings; or
    - (iii) for any other cause where it appears unreasonable or undesirable that the applicant should receive legal aid in the particular circumstances of the case:
  - (e) in the case of an appeal (whether or not in respect of proceedings in which the applicant has received legal aid), the Commissioner considers that for any reason the grant of legal aid or further legal aid is not justified.
- (5) The Commissioner may refuse to grant legal aid to an applicant in respect of any original proceeding under an enactment specified in Schedule 2 if the Commissioner considers that the grant of legal aid is not justified.
- (6) In determining under subsection (5) whether a grant of legal aid is not justified, the Commissioner must have regard to—

- (a) any previous proceedings in the matter to which the application relates; and
- (b) any personal protection issues such as (without limitation) any orders relating to domestic violence, protection of personal property rights, compulsory treatment, or compulsory care; and
- (c) *[Repealed]*
- (d) whether there are any complex factual, legal, or evidential matters that require the determination of a court; and
- (e) whether it is in the public interest that legal aid be granted.

Section 10(2): replaced, on 2 September 2013, by section 6(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 10(2A): inserted, on 2 September 2013, by section 6(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 10(3A): inserted, on 2 September 2013, by section 6(2) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 10(6)(c): repealed, on 2 September 2013, by section 6(3) of the Legal Services Amendment Act 2013 (2013 No 43).

## **11 When legal aid may be granted: civil matters continued**

- (1) To avoid doubt, legal aid in respect of civil proceedings is not available to any body of persons, whether corporate or unincorporate, except as provided in sections 10(1) and 47.
- (2) Section 10(2) and (4)(a) and (b) do not apply to—
  - (a) applications for legal aid in respect of victims' claims proceedings; or
  - (b) applications for legal aid by a victim in respect of—
    - (i) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; or
    - (ii) a hearing of the New Zealand Parole Board (other than one in a proceeding specified in section 6(c)(i)) that concerns an offender and is a hearing at which the victim may appear as of right or with the Board's leave; or
  - (c) applications for legal aid by a person of a class specified in regulations as exempted from the application of section 10(2) and (4)(a) and (b); or
  - (d) applications for legal aid in respect of a proceeding of a class specified in regulations as exempted from the application of section 10(2) and (4)(a) and (b).
- (3) Section 10(1), (2), and (4)(a) do not apply to applications for legal aid under section 47 in respect of certain proceedings before the Waitangi Tribunal.
- (4) Section 10(4)(d)(i) does not apply to original proceedings under an enactment specified in Schedule 2.

- (5) The Commissioner may grant legal aid to an applicant in respect of a civil proceeding under the Criminal Proceeds (Recovery) Act 2009 if the Commissioner considers that the interests of justice require that the applicant be granted legal aid.
- (6) In considering whether the interests of justice require that an applicant be granted legal aid under subsection (5), the Commissioner must have regard to—
  - (a) whether there are any serious consequences for the applicant if legal aid is not granted; and
  - (b) whether there are any complex factual, legal, or evidential matters in the proceeding that require the applicant to be legally represented.
- (7) Section 10(3) and (4) do not apply to an application for legal aid in respect of a civil proceeding under the Criminal Proceeds (Recovery) Act 2009.

## **12 Other situations where legal aid refused or limited: civil matters**

- (1) Subject to subsection (2), the Commissioner may not grant legal aid in respect of—
  - (a) proceedings involving a decision under the Immigration Act 2009 in relation to a person who—
    - (i) is unlawfully in New Zealand in terms of that Act; or
    - (ii) is lawfully in New Zealand only by being the holder of a temporary entry class visa granted under that Act; or
    - (iii) is not in New Zealand and—
      - (A) is not a New Zealand citizen; or
      - (B) does not hold a residence class visa granted under that Act.
  - (b) proceedings involving a decision or matter under the Immigration Act 1987 in relation to a person who—
    - (i) was unlawfully in New Zealand in terms of that Act; or
    - (ii) not having been granted legal aid for the purpose of any particular proceedings in New Zealand before the person arrived in New Zealand, was lawfully in New Zealand only by virtue of being the holder of a temporary permit or a limited purposes permit.
- (2) Subsection (1) does not apply in respect of—
  - (a) proceedings referred to in subsection (1)(b) for which a person was granted legal aid before the date fixed under section 2(1) of the Immigration Act 2009 for the coming into force of that Act; or
  - (b) proceedings specified in section 7(1)(j) to (n) of this Act.
- (3) The Commissioner must refuse to grant legal aid to an applicant who applies for legal aid in connection with a civil proceeding in which he or she is concerned in a representative, fiduciary, or official capacity, unless it appears to the Commissioner that,—

- (a) if proceedings were brought, the court would be likely to order that the cost of the proceedings be paid out of any property, estate, or fund; and
  - (b) if that happened, the property, estate, or fund would be diminished or extinguished by the order and any person beneficially interested would suffer hardship as a result.
- (4) If an applicant applies for legal aid in connection with a matter in which numerous persons have the same interest, and the rules of court permit the applicant to sue or be sued on behalf of all those persons, then the Commissioner must refuse to grant legal aid if satisfied that—
- (a) the refusal of legal aid to the applicant would not seriously prejudice the rights of the applicant; or
  - (b) it would be proper for the other persons having the same interest to pay for the proceedings.
- (5) If an applicant has the right, according to the rules of court, to be joined with others as plaintiff in 1 action because a common question of law or fact arises, then the Commissioner may grant legal aid to the applicant that is limited to the proceedings necessary to preserve the applicant’s right to relief.
- (6) In this section, **rules of court** includes the rules governing the procedure of any court, tribunal, authority, or other body before whom the proceedings are heard.
- Compare: 2000 No 42 s 10

### **13 Legal aid not available to insured or indemnified persons**

A person who has any form of indemnification or insurance in respect of the legal costs of bringing or defending any proceedings is not entitled to legal aid in respect of those proceedings, unless or until the person has exhausted any benefits available under the indemnification or insurance.

Compare: 2000 No 42 s 11

## Subpart 2—Application and grant

### **14 Application for grant of legal aid**

- (1) An application for a grant of legal aid—
- (a) must be made in the prescribed manner to the Commissioner; and
  - (b) must include a statement of financial means in a form prescribed by the Secretary; and
  - (c) must, subject to subsection (2), be made before the final disposition.
- (2) An application for a grant of legal aid may be made after the final disposition only if—
- (a) the Commissioner receives the application within 15 working days from the date of the final disposition; and
  - (b) the Commissioner is satisfied that—



- (i) the application was delayed because of circumstances beyond the control of the applicant and the provider, and those circumstances could not have been reasonably anticipated; and
  - (ii) the applicant and the provider took all reasonable steps to apply before the final disposition.
- (3) In this section, **final disposition** means the final disposition of the matter to which the application relates, by a court, tribunal, or any other means.

Compare: 2000 No 42 s 12

### **15 Special provisions relating to minors and mentally disordered persons**

- (1) A minor aged 16 or over may apply for legal aid in respect of a civil matter in his or her own right and, despite any enactment or rule of law,—
  - (a) if a grant is made, is personally liable for any repayment required under it; and
  - (b) is personally liable for any costs that the court orders the person to pay; and
  - (c) may, unless the court directs otherwise, sue or be sued without a guardian *ad litem* or next friend.
- (2) An application for legal aid in respect of a civil matter for a person who is aged under 16 or is mentally disordered must be made by a person of full age and capacity.
- (3) If the rules of court require proceedings to be brought or defended by a next friend or guardian *ad litem*, then an application for legal aid in respect of a civil matter for a person who is aged under 16 or is mentally disordered must be made by the person's next friend or guardian *ad litem*, or by a person intending to act in that capacity.
- (4) An application for civil legal aid in respect of a person who is aged under 16 or is mentally disordered must be accompanied by an undertaking by the person making the application that he or she will pay any repayment required to be paid under the grant.
- (5) The Commissioner may waive any of the requirements or conditions set out in subsections (2) to (4).

Compare: 2000 No 42 s 13

### **16 Decision on application for legal aid**

- (1) On an application for legal aid, the Commissioner may, in respect of the whole or any part of the proceedings or appeal,—
  - (a) grant legal aid to the applicant; or
  - (b) grant legal aid on an interim basis until a decision is made under paragraph (a) or (d); or

- (c) request further information from the applicant or the proposed lead provider, or both; or
  - (d) decline the application.
- (2) When granting legal aid under subsection (1)(a) or (b), the Commissioner—
  - (a) must specify the conditions, as described in section 18, attaching to the grant; and
  - (b) must identify the lead provider; and
  - (c) may specify a maximum grant.
- (3) If the Commissioner grants legal aid on an interim basis to a person,—
  - (a) payments made under the grant cease—
    - (i) when the Commissioner decides the application under subsection (1)(a) or (d); or
    - (ii) if the Commissioner considers it appropriate that the payments should cease; and
  - (b) if payments made under the grant have ceased under paragraph (a),—
    - (i) section 31 does not apply to it; and
    - (ii) section 32 applies to it with any necessary modifications and a reference to withdrawal of legal aid under that section must be read as a reference to the grant ceasing.
- (4) This section does not apply to applications under section 47 for legal aid in respect of certain proceedings before the Waitangi Tribunal.
- (5) This section is subject to section 16A.

Compare: 2000 No 42 s 14

Section 16(5): inserted, on 2 September 2013, by section 7 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **16A Use of automated electronic systems for certain grants of legal aid**

- (1) The Commissioner may use an automated electronic system to grant legal aid to a natural person if—
  - (a) the person requires the grant for proceedings in respect of an offence punishable by a maximum term of imprisonment of not less than 6 months; and
  - (b) neither the income nor the disposable capital of that person exceeds the relevant maximum level prescribed in the regulations.
- (2) A grant made in the manner authorised by subsection (1) is, for the purposes of this Act, taken to have been made by the Commissioner.
- (3) Where an error is made in a grant of legal aid made in the manner authorised by subsection (1), the Commissioner may cancel or correct the grant.
- (4) Subsection (2) is subject to subsection (3).

- (5) A grant made in the manner authorised by subsection (1) is not subject to any of the conditions referred to in section 18.
- (6) Every grant made in the manner authorised by subsection (1) must state a maximum grant, which must be the amount prescribed under subsection (7).
- (7) The Commissioner may from time to time, by notice in the *Gazette*, specify the amount of the maximum grant for any grant made in the manner authorised by subsection (1).
- (8) A notice under subsection (7) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 16A: inserted, on 2 September 2013, by section 8 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **17 Commissioner must notify applicant when legal aid declined**

If the Commissioner has declined an application for legal aid under this Act, the Commissioner must, in writing, advise the applicant of the decision and of his or her right to seek—

- (a) a reconsideration of the decision under section 51; and
- (b) a review of any reconsideration of that decision under section 52.

#### **18 Conditions on grant of legal aid**

- (1) A grant of legal aid may be subject to a condition that the aided person must pay to the Commissioner an interim repayment of a specified amount determined in accordance with section 20.
- (2) Every grant of legal aid is subject to the condition that the aided person must pay to the Commissioner a repayment determined in accordance with section 21.
- (3) A grant of legal aid may be subject to the condition that the aided person must authorise a charge to be registered in favour of the Commissioner over specified property of the aided person as security for the interim repayment or the repayment, or both.
- (4) The Commissioner may lodge a caveat under section 138 of the Land Transfer Act 2017 on property over which a charge could be registered in favour of the Commissioner, regardless of whether the aided person has complied with any condition imposed under subsection (3).
- (5) Subsection (1), the provisions of subsection (3) relating to a charge as security for payment of an interim repayment required by a condition referred to in subsection (1), and subsection (4)—
  - (a) do not apply to the maximum grant under section 23(4) of legal aid in respect of victims' claims proceedings; but

- (b) apply to an amendment under section 28(4) of the maximum grant under section 23(4) of legal aid in respect of proceedings of that kind.
- (6) The condition in subsection (2) does not apply to a grant of legal aid made on an interim basis if the Commissioner considers that the grant should not be subject to that condition.
- (7) This section does not apply to—
  - (a) applications for legal aid that come within any of paragraphs (a) to (e)(ii) of the definition of specified application in section 4(1); or
  - (b) applications for legal aid by a person of a class specified in regulations as exempted from the application of this section; or
  - (c) applications for legal aid in respect of a proceeding of a class specified in regulations as exempted from the application of this section; or
  - (d) a grant made in the manner authorised by section 16A(1); or
  - (e) applications for legal aid by a person who is charged with or convicted of a prescribed offence and to whom section 9(2) does not apply.

Compare: 2000 No 42 s 15

Section 18(4): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 18(7): replaced, on 2 September 2013, by section 9 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **18A User charge payable by aided person**

- (1) Every grant of legal aid for a civil matter, other than a grant to which subsection (4) applies, is subject to the condition that the aided person pay a user charge of the prescribed amount to the lead provider.
- (2) The condition relating to the user charge is satisfied once the user charge is paid and no further user charges are payable in respect of the grant to which the condition attaches.
- (3) The lead provider is authorised to receive the user charge from, or on behalf of, the aided person and may—
  - (a) decline to provide any services under the grant of legal aid until the user charge under subsection (1) is paid; or
  - (b) if the user charge has not been paid but any services of that kind have been provided, recover the user charge from the aided person.
- (4) This section does not apply to—
  - (a) a grant of legal aid made on a specified application; or
  - (b) an application for legal aid by a person of a class specified in regulations as exempted from the application of this section; or
  - (c) an application for legal aid in respect of a proceeding of a class specified in regulations as exempted from the application of this section.

- (5) A grant of legal aid is also within subsection (4) if it is made on an application for matters referred to in that subsection as well as for other matters.

Section 18A: inserted, on 2 September 2013, by section 10 of the Legal Services Amendment Act 2013 (2013 No 43).

## **19 Special provisions about conditions on grants to persons involved in proceedings under Domestic Violence Act 1995**

- (1) In this section, **person A** means a person who is a party to proceedings (which includes appeals) that in any way relate to, or arise out of, an application by or on behalf of, or a grant in favour of, the person for a protection order under Part 2, or an order relating to property under Part 3, of the Domestic Violence Act 1995.
- (2) A grant of legal aid made to person A is not subject, and may not be made subject, to any of the conditions referred to in subsection (1), (2), or (3) of section 18, unless subsection (3) or (4) of this section applies.
- (3) The Commissioner may impose any of the conditions in subsection (1), (2), or (3) of section 18 on a grant of legal aid made to person A if the Commissioner considers there are exceptional circumstances that justify the imposition of 1 or more of those conditions.
- (4) If a grant of legal aid to person A is in respect of proceedings that involve matters in addition to proceedings under the Domestic Violence Act 1995, then the Commissioner may impose conditions on the part of the grant that relates to those additional matters.
- (5) If the Commissioner proposes to impose conditions under subsection (4), he or she must—
- (a) consider any representations by person A concerning the proportion of the grant that should not be subject to conditions; and
  - (b) determine what proportion of the grant is subject to conditions, and what those conditions are; and
  - (c) advise person A of the Commissioner's decision, and explain how he or she decided what proportion of the grant should be subject to conditions.

Compare: 2000 No 42 s 16

## **20 Interim repayments payable**

- (1) If an interim repayment is payable under a grant of legal aid, the Commissioner must determine the amount of the interim repayment by having regard to the prescribed repayment amount set by regulations.
- (2) The Commissioner may require an aided person to start making interim repayments at any time after legal aid has been granted.

Compare: 2000 No 42 s 17

**21 Amount of repayment payable**

- (1) This section sets out the repayment payable by an aided person under section 18(2).
- (2) The repayment payable if the proceeds of proceedings are less than the cost of services is determined by—
  - (a) adding the proceeds of proceedings and the prescribed repayment amount; and
  - (b) subtracting from the amount obtained under paragraph (a)—
    - (i) the amount (if any) by which it exceeds the cost of services; and
    - (ii) any interim repayment paid by the aided person; and
    - (iii) any deductions allowed by the Commissioner in accordance with this Act or the regulations.
- (3) The repayment payable if the proceeds of proceedings equal or exceed the cost of services is the cost of services minus—
  - (a) any interim repayment paid by the aided person; and
  - (b) any deductions allowed by the Commissioner in accordance with this Act or the regulations.
- (4) The repayment payable if there are no proceeds of proceedings is the lesser of—
  - (a) the cost of services minus—
    - (i) any interim repayment paid by the aided person; and
    - (ii) any deductions allowed by the Commissioner in accordance with this Act or the regulations;
  - (b) the prescribed repayment amount minus the amounts referred to in paragraph (a)(i) and (ii).
- (5) The prescribed repayment amount referred to in subsection (2)(a) is zero in respect of victims' claims proceedings.
- (6) Subsection (4) does not apply to victims' claims proceedings.
- (7) If an aided person was granted legal aid for a prescribed offence and the Commissioner is required by section 9(2) to redetermine the person's means, the cost of services for the purposes of calculating a repayment under subsection (4) includes the cost of services calculated under the grant before the aided person's means were redetermined.

Compare: 2000 No 42 s 18

**22 Lead providers**

If more than 1 provider provides services under a grant of legal aid, any obligation of the Commissioner to pay or to communicate with a person providing

services under the grant is owed only to the lead provider, and not to any other provider.

Compare: 2000 No 42 s 19

### **23 Maximum grant**

- (1) A grant of legal aid may specify a maximum grant, which is the amount of legal aid that is authorised under the grant.
- (2) A maximum grant may be expressed in any way. For example, it may refer to a total dollar amount, or a maximum number of hours, or a period within which the aid must be provided, or any combination of these or any other specifications.
- (3) When determining a maximum grant, the Commissioner may take into account any delay on the part of the applicant in applying for legal aid and the reason for the delay.
- (4) However, every grant of legal aid in respect of victims' claims proceedings (as defined in section 4(1)) must specify a maximum grant of the amount prescribed for the purposes of this subsection by regulations.

Compare: 2000 No 42 s 20

## Subpart 3—After legal aid is granted

### **24 Provider in civil proceedings to notify other parties**

- (1) When a party to civil proceedings is granted legal aid, the provider under the grant must at once give notice of that fact to every other party to the proceedings, and to the Registrar of the relevant court.
- (2) If any other person subsequently becomes a party to the proceedings, the provider must give an equivalent notice to the new party.
- (3) If the grant of legal aid is withdrawn, the provider under the grant must notify all other parties to the proceedings of that fact.

Compare: 2000 No 42 s 21

### **25 Commissioner to be notified of change in circumstances**

- (1) An aided person (and any person acting for an aided person as a lawyer, next friend, guardian *ad litem*, or in any other capacity) must notify the Commissioner of the following:
  - (a) any increase in the income or disposable capital of (or being treated as being of) the aided person by an amount that could affect the aided person's eligibility for legal aid;
  - (b) any change to the address of the aided person (and the person acting for the aided person, if applicable).
- (2) A person applying for legal aid (in this section, the **applicant**) must notify the Commissioner of the following:

- (a) any increase in the income or disposable capital of (or being treated as being of) the applicant by an amount that could affect the applicant's eligibility for legal aid;
  - (b) any change to the applicant's address.
- (3) A person who is no longer an aided person, but who becomes aware that he or she, while an aided person, received an increase in his or her income or disposable capital that could have affected his or her eligibility for legal aid, must notify the Commissioner of that fact as soon as practicable.
- (4) For the purposes of subsection (1), an aided person is deemed to have waived any legal professional privilege that might otherwise prevent a person acting for the aided person from complying with subsection (1).

Compare: 2000 No 42 s 22

## **26 Commissioner to keep aided person informed**

- (1) The Commissioner must give notice to an aided person of the conditions of his or her grant of legal aid—
- (a) when the grant is first made; and
  - (b) when an amendment is made to the maximum grant of legal aid; and
  - (c) whenever any material change is made to the conditions; and
  - (d) when the repayment payable (as determined under section 21) is settled by the Commissioner; and
  - (e) whenever the aided person asks for such a notice.
- (2) Every notice under subsection (1) must include—
- (a) a statement of any amounts currently owing by the aided person, whether as an interim repayment or a repayment; and
  - (b) details of any charges held, or to be taken, by the Commissioner over property of the aided person; and
  - (c) advice to the person about how to seek—
    - (i) a reconsideration of the Commissioner's decision under section 51; and
    - (ii) an examination of the cost of services under section 90; and
    - (iii) a review of the Commissioner's decision under section 52.

Compare: 2000 No 42 s 23

## **27 Private mediation**

- (1) In this section, **private mediation** means any mediation other than mediation that is—
- (a) ordered by a court; or
  - (b) part of a court process or proceeding; or



- (c) part of a dispute resolution process under any enactment.
- (2) The Commissioner may fund legal services related to private mediation in respect of any matter for which legal aid may be granted under section 7 if the Commissioner is satisfied that—
  - (a) the matter is suitable for private mediation; and
  - (b) there is a reasonable likelihood that private mediation will resolve the dispute or part of the dispute.

Compare: 2000 No 42 s 23A

## **28 Application for amendment to grant of legal aid**

- (1) An application for an amendment to a grant of legal aid—
  - (a) must be made by either the aided person or the provider; and
  - (b) must be made in the prescribed manner to the Commissioner; and
  - (c) must, subject to subsection (2), be made before the final disposition.
- (2) An application for an amendment to a grant of legal aid may be made after the final disposition only if—
  - (a) the Commissioner receives the application within 15 working days from the date of the final disposition; and
  - (b) the Commissioner is satisfied that—
    - (i) the application was delayed because of circumstances beyond the control of the applicant and the provider, and those circumstances could not have been reasonably anticipated; and
    - (ii) the applicant and the provider took all reasonable steps to apply before the final disposition.
- (3) Following an application for amendment to a grant of legal aid, the Commissioner may confirm the grant or amend it in a manner consistent with this Act and any regulations.
- (4) However, the Commissioner may, on an application under this section, amend the maximum grant under section 23(4) of legal aid in respect of victims' claims proceedings only if satisfied that the aided person would, if section 11(2) applied to his or her application for legal aid in respect of those proceedings, be granted legal aid.
- (5) The Commissioner may, in either or both of the following circumstances, refuse to amend under subsection (4) the maximum grant under section 23(4) of legal aid in respect of victims' claims proceedings:
  - (a) if the Commissioner is unable to obtain full information concerning the applicant's financial affairs, because of the default or failure of the applicant;
  - (b) if, in the opinion of the Commissioner, the prescribed repayment amount will exceed the likely cost of the proceedings.

- (6) In this section, **final disposition** means the final disposition of the matter to which the application relates, by a court, tribunal, or any other means.

Compare: 2000 No 42 s 24

### **29 Withdrawal of, or amendment to, grant of legal aid: criminal matters**

In relation to a criminal matter, the Commissioner may at any time—

- (a) withdraw legal aid from, or amend a grant of legal aid to, an aided person if—
- (i) the Commissioner is satisfied that the aided person has sufficient means to enable the person to obtain legal assistance and representation; or
  - (ii) the Commissioner considers that the interests of justice no longer require that legal aid be given to the person; or
  - (iii) the aided person requests it; or
- (b) amend the conditions on a grant of legal aid (other than the condition referred to in section 18(2)) if the Commissioner considers that the conditions of the grant of legal aid are no longer appropriate.

Compare: 2000 No 42 s 25

### **30 Withdrawal of, or amendment to, grant of legal aid: civil matters**

- (1) The Commissioner must withdraw legal aid granted in respect of a civil matter in any of the following circumstances:
- (a) the grant of legal aid includes a condition that the aided person pay an interim repayment, and payment of that interim repayment is—
    - (i) more than 21 days in arrears; or
    - (ii) unpaid by any date to which the Commissioner has extended the time for paying the interim repayment;
  - (b) the grant of legal aid is subject to a condition that the aided person authorise a charge to be registered over specified property, and the aided person has not so authorised the charge within 15 working days of the date on which the Commissioner asked the person to do so;
  - (c) the Commissioner becomes aware that the aided person was not entitled to legal aid because section 12(1) applies and section 12(2) does not.
- (2) In relation to a civil matter, the Commissioner may at any time withdraw legal aid from, or amend a grant of legal aid to, an aided person in any of the following circumstances:
- (a) the aided person is no longer a person who would be entitled to that grant of legal aid, by virtue of any of the provisions of section 10, 11, 12, or 13;
  - (b) the Commissioner is satisfied that the proceedings in respect of which legal aid was granted have been disposed of;

- (c) the Commissioner is satisfied that the aided person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Commissioner, or has required unreasonably that the proceedings be continued:
  - (d) the Commissioner considers that the aided person no longer has reasonable grounds for taking, defending, or being a party to the proceedings, or that it is unreasonable or undesirable in the particular circumstances for the person to continue to receive legal aid:
  - (e) the Commissioner is satisfied that the aided person has, in relation to any application by that person relating to legal aid,—
    - (i) intentionally or negligently made an untrue statement about that person's resources, or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after the aid was granted; or
    - (ii) intentionally contravened or failed to comply in any respect with this Act or regulations:
  - (f) the aided person requests that the grant of legal aid be withdrawn.
- (3) In relation to a civil matter, the Commissioner may at any time amend the conditions on a grant of legal aid (other than the condition referred to in section 18(2)) if the Commissioner considers that the conditions of the grant of legal aid are no longer appropriate.

Compare: 2000 No 42 s 26

### **31 Withdrawal of grant**

- (1) This section applies when the Commissioner proposes (other than with the agreement, or at the request, of the aided person) to withdraw a grant of legal aid, under section 29 or 30, in such a way that the aided person is likely to be detrimentally affected.
- (2) A grant of legal aid must not be withdrawn until—
  - (a) notice of intention to withdraw the grant has been given to the aided person and the lead provider; and
  - (b) the aided person has been given a reasonable opportunity under the notice to make submissions on why the grant should not be withdrawn in the manner indicated; and
  - (c) the Commissioner has considered any submission by or on behalf of the aided person.
- (3) If a grant is withdrawn, the Commissioner must immediately notify the aided person and the lead provider of—
  - (a) the date on which the withdrawal takes effect, which must be a date on or after the date on which the Commissioner reasonably believes the aided person will receive the notice; and

- (b) the reasons for the withdrawal; and
  - (c) the aided person's rights to seek a reconsideration under section 51 and a review under section 52.
- (4) This section does not apply to legal aid granted on an interim basis.  
Compare: 2000 No 42 s 27

### **32 Consequences of withdrawing legal aid**

- (1) The withdrawal of legal aid does not affect—
- (a) the aided person's obligations arising out of the conditions of the grant; or
  - (b) the Commissioner's rights to enforce those obligations; or
  - (c) the Commissioner's obligation to pay for the services provided under the grant before the date of its withdrawal.
- (2) If legal aid is withdrawn from an aided person because of an increase in the person's income or disposable capital, the Commissioner may recover from the aided person any amount paid or payable by the Commissioner under the grant (less any interim repayment already paid by the person) in respect of—
- (a) the period beginning on or after the date on which the person first received the increase to the person's income or disposable capital that has affected entitlement to legal aid; and
  - (b) the date of withdrawal of legal aid.
- (3) Any amount recoverable by the Commissioner under subsection (2) is to be treated for all purposes as if it were a repayment payable by the aided person to the Commissioner.
- (4) If legal aid is withdrawn from a person who was receiving aid from a provider, the provider has the right to recover from the aided person the difference between the amount paid or payable by the Commissioner under this Act and the full amount of that provider's fees and disbursements.
- (5) The Commissioner is not obliged to pay for any services provided to an aided person after the date on which legal aid is withdrawn.  
Compare: 2000 No 42 s 28

#### **Subpart 4—How Commissioner may enforce conditions of grant**

### **33 Amount payable by aided person to Commissioner**

At any time, the total amount payable to the Commissioner by an aided person in respect of a grant is—

- (a) the amount of interim repayments outstanding (if any); and
- (b) if the proceedings have concluded, the amount of repayment payable (if any), determined in accordance with section 21; and

- (c) any interest payable under section 40 in accordance with regulations; and
- (d) the amount of any expense reasonably incurred by the Commissioner for the purpose of enforcing or securing a debt payable to the Commissioner by the aided person, but only if the expense is of a kind specified by the regulations for the purposes of this paragraph.

Compare: 2000 No 42 s 30

Section 33: amended, on 2 September 2013, by section 11(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 33(b): amended, on 2 September 2013, by section 11(2) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 33(c): inserted, on 2 September 2013, by section 11(2) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 33(d): inserted, on 2 September 2013, by section 11(2) of the Legal Services Amendment Act 2013 (2013 No 43).

### **34 Amounts payable in respect of grant are debts due to Commissioner**

- (1) An amount payable to the Commissioner as a condition of a grant of legal aid (whether as an interim repayment or a repayment) and any other amount payable to the Commissioner in respect of the grant may be recovered in any court or tribunal of competent jurisdiction as a debt due to the Commissioner.
- (2) *[Repealed]*
- (3) The Commissioner may, by agreement with the aided person, make whatever arrangements (including any adjustments to those arrangements) that the Commissioner considers appropriate for the payment by the aided person of any amount payable under a grant of legal aid, or any other debt payable to the Commissioner by the aided person.
- (4) In making any arrangements under subsection (3), the Commissioner must have regard to the following principles:
  - (a) any debt that is to be paid from the aided person's income should be paid by the aided person within 5 years from when the debt arises:
  - (b) any debt that is to be paid from the aided person's income and capital should be paid by the aided person within 7 years from when the debt arises.
- (5) Despite subsection (4), the Commissioner may, after having regard to the principles in that subsection, make whatever arrangements the Commissioner considers appropriate in the circumstances.

Compare: 2000 No 42 s 31

Section 34 heading: amended, on 2 September 2013, by section 12(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 34(1): replaced, on 2 September 2013, by section 12(2) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 34(2): repealed, on 2 September 2013, by section 12(2) of the Legal Services Amendment Act 2013 (2013 No 43).

**35 Commissioner may adjust rate of payment of debt, etc**

- (1) The Commissioner may, in accordance with this section,—
  - (a) adjust the rate of payment of a debt by an aided person; or
  - (b) require an aided person to commence or recommence payment of a debt.
- (2) The Commissioner must not make a decision under subsection (1)(a) or (b) unless—
  - (a) the Commissioner considers, in light of new information, that the decision is justified; and
  - (b) reasonable efforts to reach agreement with the aided person have failed.
- (3) No adjustment to the rate of payment of a debt may be made until the Commissioner—
  - (a) notifies the aided person in writing of his or her intention to make the adjustment; and
  - (b) provides the aided person with reasons for the proposed adjustment; and
  - (c) gives the aided person a reasonable opportunity to make submissions on why the adjustment should not be made in the manner indicated; and
  - (d) considers any submissions by the aided person.
- (4) The Commissioner may not require an aided person to commence or recommence payment of a debt until the Commissioner—
  - (a) notifies the aided person in writing of his or her intention to require the aided person to commence or recommence payment of the debt; and
  - (b) provides the aided person with reasons why payment of the debt should commence or recommence; and
  - (c) gives the aided person a reasonable opportunity to make submissions on why the person should not commence or recommence payment of the debt in the time indicated; and
  - (d) considers any submissions by the aided person.
- (5) If the Commissioner decides to adjust the rate of payment of a debt or require an aided person to commence or recommence payment of a debt, the Commissioner must notify the aided person in writing of—
  - (a) the Commissioner’s decision; and
  - (b) the aided person’s right to seek a reconsideration under section 51 or a review under section 52; and

- (c) the date on which the decision takes place (which must be no earlier than the day after the date that the Commissioner reasonably believes the aided person will receive notice under this subsection).

Compare: 2000 No 42 s 31A

### **36 Charges on proceeds of proceedings**

- (1) The proceeds of proceedings to which a grant of legal aid relates are subject to a charge in favour of the Commissioner for the amount of the repayment payable under the grant.
- (2) Subsection (1) operates to create a charge even if the grant of legal aid in respect of the relevant proceedings has been withdrawn.
- (3) A charge created by this section on any damages or costs does not prevent a court from allowing these to be set off against other damages or costs in a case where a solicitor's lien for costs would not prevent it.
- (4) A charge created by this section may be registered,—
  - (a) in the case of land, against that land in accordance with subpart 5 of Part 3 of the Land Transfer Act 2017; or
  - (b) in the case of any other property, against that property in accordance with the Chattels Transfer Act 1924, the Personal Property Securities Act 1999, or the Motor Vehicle Securities Act 1989, as appropriate.
- (5) Subsection (1) does not apply to property returned, transferred, or granted to an aided person as a result of proceedings before the Waitangi Tribunal.

Compare: 2000 No 42 s 32

Section 36(4)(a): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

### **37 Commissioner may exempt property from charge**

- (1) The Commissioner may, on application by an aided person, exempt any property that is part of the proceeds of proceedings from being subject to a charge under section 36.
- (2) The Commissioner may exercise his or her power under subsection (1) if the Commissioner considers that, having regard to the value or nature of the property and all other relevant circumstances, it would be just and equitable to do so.
- (3) Any application for exemption must be made within 20 working days (or such longer time as the Commissioner, on application, allows) of the date of the judgment or out-of-court settlement giving rise to the proceeds of proceedings.
- (4) On receipt of an application for exemption, the Commissioner must—
  - (a) decide whether to exempt the whole or any part of the property specified in the application, or any other property; and

- (b) advise the aided person of the decision, and of the aided person's right to apply for a reconsideration under section 51 and a review under section 52.

Compare: 2000 No 42 s 33

### **38 Transfer of charge**

- (1) If any property of an aided person is subject to a charge, the Commissioner may, if he or she considers that it would be unjust or unreasonable to require immediate payment of the amount charged, enter into an agreement with the aided person for the release of all or part of the property from all or part of the charge.
- (2) The agreement may provide for all or part of the charge to attach to any other property of the aided person, and may be subject to conditions.
- (3) The agreement has the effect of—
  - (a) releasing from the charge any property agreed to be released from the charge; and
  - (b) subjecting any property agreed to be subject to a charge to the charge as agreed.

Compare: 2000 No 42 s 34

### **39 Enforcement of charge**

- (1) In order to recover a debt due under a grant of legal aid, the Commissioner may enforce, in any manner that would be available if the charge had been given between the parties, a charge—
  - (a) registered in compliance with a condition of the grant imposed under section 18(3); or
  - (b) arising by operation of section 36, whether it is registered or not.
- (2) A transfer or act done with the intention, or having the effect, of defeating a charge referred to in subsection (1) is void as against the Commissioner, except where the transfer or act is to or in favour of a purchaser in good faith for value who, at the time of the transfer or act, had no notice of the charge.

Compare: 2000 No 42 s 35

### **40 Interest on unpaid legal aid debt**

- (1) Subsection (2) applies to any amount that is payable in respect of a grant of legal aid made on or after the commencement of this section (as substituted by section 13 of the Legal Services Amendment Act 2013).
- (2) An aided person must pay the Commissioner interest, calculated in accordance with, and at the rate or rates prescribed by, the regulations on any debt that is owed, during any period specified in the regulations, by the aided person to the Commissioner in respect of a grant of legal aid.



- (3) Subsection (4) applies to a debt (a **prior debt**) that is owed by an aided person to the Commissioner in respect of a grant of legal aid made before the commencement of this section (as substituted by the Legal Services Amendment Act 2013).
- (4) The Commissioner may, by written notice, require the aided person to pay interest in respect of the prior debt (whether or not the person is in default), and then, as from the date stated in the notice for the purpose, subsection (2) applies to the person and to the prior debt.
- (5) Despite subsection (2), interest is not payable—
  - (a) on any interim repayment; or
  - (b) unless the regulations otherwise provide, on any interest.
- (6) The interest must be calculated and paid in accordance with the regulations.
- (7) Subsection (4) does not affect any subsisting requirement under section 40(1) (as in force before the commencement of section 13 of the Legal Services Amendment Act 2013).

Section 40: replaced, on 2 September 2013, by section 13 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **41 Aided person to enforce judgment or out-of-court settlement**

- (1) An aided person must take all steps necessary to enforce a judgment or out-of-court settlement in order to recover the proceeds of proceedings.
- (2) If the aided person fails to take such steps, the Commissioner may enforce the judgment or out-of-court settlement as if it were in favour of the Commissioner, and may recover the costs of doing so from the aided person.

Compare: 2000 No 42 s 36

#### *Deduction notices*

Heading: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **41A Interpretation**

In this section and in sections 41B to 41J, unless the context otherwise requires,—

##### **benefit—**

- (a) means a benefit within the meaning of the Social Security Act 1964; but
- (b) does not include—
  - (i) an orphan's benefit payable under section 28 of the Social Security Act 1964; or
  - (ii) an unsupported child's benefit payable under section 29 of that Act; or

- (iii) a child disability allowance payable under section 39A of that Act; or
- (iv) a disability allowance payable under section 69C of that Act

**deduction notice** means a notice issued under section 41B

**overdue amount** means an amount that has become due and payable to the Commissioner and that remains unpaid; and includes—

- (a) any part of an amount of that kind; and
- (b) an amount of that kind that may not be recovered by civil action in a court of law because of the Limitation Act 2010

**payment**, in relation to a third party, includes payments made, or to be made, by the third party as—

- (a) salary or wages;
- (b) a retiring allowance or pension or other payment of a similar nature;
- (c) a benefit;
- (d) weekly compensation under the Accident Compensation Act 2001;
- (e) a bonus or an incentive payment;
- (f) commission;
- (g) consideration for work performed under a contract for services;
- (h) repayment of, or interest on, money held by a bank to the credit of an aided person (within the meaning of section 41E(3))

**third party** means the person required to make 1 or more deductions under a deduction notice.

Compare: 1957 No 87 ss 2(1), 79

Section 41A: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **41B Deduction of overdue amounts**

- (1) This section applies whenever the Commissioner has reminded an aided person in writing of the person's obligation to pay an overdue amount or has taken any other action to obtain payment of the overdue amount.
- (2) The Commissioner may issue, in writing, a deduction notice requiring a third party to deduct an amount specified in the notice due from any payment that is payable or will become payable by the third party to the aided person, whether that payment will be made—
  - (a) on the third party's own account; or
  - (b) in the third party's capacity as an agent or a trustee; or
  - (c) for any other reason.
- (3) The Commissioner must specify in the deduction notice—

- (a) whether the deduction is to be made as a lump sum or by instalments; and
  - (b) the time or times by which the amounts deducted must be paid to the Commissioner; and
  - (c) the date on which the deduction notice takes effect, being a date not earlier than the date on which it was issued.
- (4) The Commissioner must give the aided person a copy of the deduction notice.
- (5) A deduction notice is revoked when the Commissioner notifies the third party in writing to that effect or issues a new deduction notice.
- (6) The Commissioner—
- (a) may revoke a deduction notice at any time;
  - (b) must revoke the deduction notice if satisfied that the overdue amount has been paid.
- (7) Every deduction notice is subject to sections 41C to 41J.

Compare: 1964 No 136 s 86A

Section 41B: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **41C Issue of deduction notice to State sector employer**

In any case where an aided person is employed within a department (within the meaning of the State Sector Act 1988), a deduction notice may be issued to the chief executive of that department in respect of any salary or wages payable to the aided person.

Compare: 1964 No 136 s 86B

Section 41C: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **41D Discharge of obligation**

In any case where a third party deducts, under a deduction notice, any money payable to an aided person, the aided person is, to the extent of the amount deducted, discharged from his or her obligation to pay the overdue amount.

Compare: 1964 No 136 s 86C

Section 41D: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **41E Deduction notices issued to banks**

- (1) Where the third party is a bank, any money held by the bank to the credit of the aided person is subject to the provisions of section 41B and the amount required to be deducted under the deduction notice is, without prejudice to any other remedies against the aided person or any other person, deemed to be held in trust for the Commissioner and is a debt due to the Commissioner and may be recovered in any court or tribunal of competent jurisdiction.

- (2) For the purposes of this section, **bank** means a person carrying on in New Zealand the business of banking, a credit union within the meaning of the Friendly Societies and Credit Unions Act 1982, and a building society within the meaning of the Building Societies Act 1965; but does not include the Reserve Bank of New Zealand established under the Reserve Bank of New Zealand Act 1989 (except in relation to an account maintained by that bank for an employee of the bank).
- (3) For the purposes of this section, **money held by the bank to the credit of the aided person** includes money, and any interest on money, that is on deposit or deposited with a bank to the credit of the aided person, whether or not—
- (a) the deposit or depositing is on current account;
  - (b) the money is to be at interest at a fixed term or without limitation of time;
  - (c) the aided person has made any application to withdraw or uplift the money.
- (4) For the purposes of this section, money on deposit with a bank is deemed to be to the credit of the aided person if the money—
- (a) is held in a joint bank account in the name of the aided person and 1 or more other persons; and
  - (b) can be withdrawn from the account by or on behalf of the aided person without a signature being required at the time of that withdrawal from, or on behalf of, the other person or persons.

Compare: 1964 No 136 s 86D

Section 41E: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **41F Making of deductions**

- (1) Any person who makes a deduction under a deduction notice is deemed to be acting—
- (a) on the authority of the aided person and any other person concerned; and neither the aided person nor that other person has any claim against the third party or the Commissioner or the Crown in respect of that deduction; and
  - (b) on behalf of the Commissioner; and, without prejudice to any other remedies against the aided person or any other person, any amount deducted must be held in trust for the Commissioner and is a debt due to the Commissioner and may be recovered in any court or tribunal of competent jurisdiction.
- (2) A third party must, on request, give the aided person a statement in writing of any amount deducted, and of the purpose for which the deduction was made.

Compare: 1964 No 136 s 86E

Section 41F: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **41G Offences in relation to deduction notices**

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who—
  - (a) fails to make any deduction required by a deduction notice; or
  - (b) fails, after making a deduction, to pay the amount deducted to the Commissioner within the time specified in the notice; or
  - (c) permits payment to or on behalf of any person, other than the Commissioner, of any amount deemed to be held in trust for the Commissioner under section 41E or 41F.
- (2) Every employer commits an offence and is liable on conviction to a fine not exceeding \$1,000 who dismisses an employee or alters an employee's position in the employer's business or undertaking to the employee's prejudice by reason of a deduction notice having been issued to the employer.

Compare: 1957 No 87 s 106A; 1964 No 136 s 86F

Section 41G: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **41H Protected earnings**

- (1) Despite anything in sections 41B to 41G, where a deduction notice is issued to an employer of an aided person, the employer must not, in making deductions under the deduction notice, reduce the amount paid to the aided person by way of salary or wages in respect of any week to an amount that is less than 60% of the amount calculated as being the aided person's net ordinary weekly pay for a week.
- (2) For the purposes of this section, the aided person's net ordinary weekly pay for a week is the balance left after deducting from the aided person's ordinary weekly pay (as defined in section 8 of the Holidays Act 2003) the amount of tax required to be withheld or deducted in accordance with the PAYE rules of the Income Tax Act 2007 if that ordinary weekly pay were the only salary or wages paid to the aided person by the employer in respect of a week.
- (3) For the purposes of this section, where deductions are required to be made from a payment of a kind described in any of paragraphs (b) to (d) of the definition of payment in section 41A, then—
  - (a) the payment is deemed to be salary or wages; and
  - (b) the person required to make the payment is deemed to be the employer of the aided person.

Compare: 1964 No 136 s 86G

Section 41H: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

**41I Penalty for late deductions**

- (1) A third party is liable to pay to the Commissioner a penalty calculated in accordance with subsection (2) if the third party fails wholly or in part to—
  - (a) deduct the amount required by the notice; or
  - (b) pay any amount deducted under the notice to the Commissioner by the time specified in the notice.
- (2) The penalty referred to in subsection (1) must be calculated as follows:
  - (a) 10% of the amount in default or \$5, whichever is the greater:
  - (b) for each additional month or part of a month in which the amount in default or any part of the amount has not been deducted or, as the case may be, has not been paid to the Commissioner, a further penalty of 2% of that amount or part of the amount or \$1, whichever is the greater.
- (3) The Commissioner may, in his or her discretion, remit the whole or part of a penalty if he or she is satisfied that the failure to make the deduction or the payment was due to circumstances reasonably beyond the third party's control, or that, in all the circumstances, the imposition of that penalty would be inequitable.
- (4) If the Commissioner decides to remit the whole or part of any penalty and any amount of the penalty has been paid under this section, the Commissioner may refund any excess.
- (5) An amount payable to the Commissioner under subsection (1) is a debt due to the Commissioner and may be recovered in any court or tribunal of competent jurisdiction.

Compare: 1964 No 136 s 86I

Section 41I: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

**41J Notices given to third parties**

The provisions of section 115 apply to a deduction notice given to a third party under section 41B except that if the third party is an agency, such as a business, government department, Crown entity or other instrument of the Crown, the notice may be left at, or posted to, the head office of the agency or to the office of the agency responsible for making the payment to which the deduction notice relates.

Compare: 1964 No 136 s 86J

Section 41J: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

*Decisions not to recover debt, write-offs, and refunds*

Heading: inserted, on 2 September 2013, by section 14 of the Legal Services Amendment Act 2013 (2013 No 43).

**42 Commissioner may decide not to recover debt in certain circumstances**

- (1) The Commissioner may decide not to recover any debt due to the Commissioner under a grant of legal aid if—
  - (a) the enforcement of the debt would cause serious hardship to the aided person;
  - (b) the cost to the Commissioner of enforcing the debt is likely to exceed the amount of the debt that is likely to be repaid;
  - (c) the Commissioner considers that it would be just and equitable not to recover the debt.
- (2) The Commissioner may make a decision under subsection (1) at the time that legal aid is granted, or at any time after it is granted.
- (3) If the Commissioner decides not to recover a debt,—
  - (a) the debt must be treated as being written off for the purposes of section 43; and
  - (b) section 43(2) to (5) apply accordingly.
- (4) In subsection (1), **serious hardship** means significant financial difficulties that arise because of—
  - (a) the aided person's inability to meet minimum living expenses according to normal community standards; or
  - (b) the cost of medical treatment of an illness or injury of the aided person or the aided person's dependant; or
  - (c) a serious illness suffered by the aided person or the aided person's dependant.

Compare: 2000 No 42 s 36A

**43 Commissioner may write off amounts payable**

- (1) The Commissioner may write off all or any part of any repayment, interim repayment, interest, or any other debt payable to the Commissioner by an aided person in any of the following circumstances:
  - (a) the enforcement of the debt would, in the opinion of the Commissioner, cause serious hardship to the aided person;
  - (b) the cost to the Commissioner of enforcing the debt is likely to exceed the amount of the debt that is likely to be repaid;
  - (c) the Commissioner considers that it would be just and equitable to write off the debt.

- (2) When a debt has been written off under this section, the Commissioner must give notice to the debtor of the write-off.
- (3) When a debt is written off under this section, the debtor is, from the date of the write-off, no longer liable to pay the debt.
- (4) If, despite the write-off, a debtor repays some or all of a written-off debt, the Commissioner must return the amount that was written off.
- (5) The write-off of a debt does not affect the Commissioner's obligation to pay any person who provided legal services under the relevant grant of legal aid.
- (6) In subsection (1), **serious hardship** has the meaning given in section 42(4).

Compare: 2000 No 42 s 37

#### **44 Commissioner to refund excess payments**

- (1) The Commissioner must refund any amount paid by an aided person to the Commissioner that is—
  - (a) more than the aided person is or was required to pay; or
  - (b) more than the cost of services.
- (2) In assessing the cost of services for the purposes of subsection (1)(b), any interest paid under section 40 must be disregarded.

Compare: 2000 No 42 s 39

Section 44(2): inserted, on 2 September 2013, by section 15 of the Legal Services Amendment Act 2013 (2013 No 43).

### Subpart 5—Award of costs in civil proceedings

#### **45 Liability of aided person for costs**

- (1) If an aided person receives legal aid for civil proceedings, that person's liability under an order for costs made against him or her with respect to the proceedings must not exceed an amount (if any) that is reasonable for the aided person to pay having regard to all the circumstances, including the means of all the parties and their conduct in connection with the dispute.
- (2) No order for costs may be made against an aided person in a civil proceeding unless the court is satisfied that there are exceptional circumstances.
- (3) In determining whether there are exceptional circumstances under subsection (2), the court may take account of, but is not limited to, the following conduct by the aided person:
  - (a) any conduct that causes the other party to incur unnecessary cost;
  - (b) any failure to comply with the procedural rules and orders of the court;
  - (c) any misleading or deceitful conduct;
  - (d) any unreasonable pursuit of 1 or more issues on which the aided person fails:



- (e) any unreasonable refusal to negotiate a settlement or participate in alternative dispute resolution;
  - (f) any other conduct that abuses the processes of the court.
- (4) Any order for costs made against the aided person must specify the amount that the person would have been ordered to pay if this section had not affected that person's liability.
- (5) If, because of this section, no order for costs is made against the aided person, an order may be made specifying what order for costs would have been made against that person with respect to the proceedings if this section had not affected that person's liability.
- (6) If an order for costs is made against a next friend or guardian *ad litem* of an aided person who is a minor or is mentally disordered, then—
- (a) that next friend or guardian *ad litem* has the benefit of this section; and
  - (b) the means of the next friend or guardian *ad litem* are taken as being the means of the aided person.

Compare: 2000 No 42 s 40

#### **46 Costs of successful opponent of aided person**

- (1) This section applies if an order is made under section 45 that specifies that an aided person would have incurred a liability, or a greater liability, for costs if that section had not affected his or her liability.
- (2) If this section applies, the party to the proceedings who is prejudiced by the operation of section 45 (in this section, the **applicant**) may apply to the Commissioner in the prescribed manner for payment by the Commissioner of some or all of the difference between the costs (if any) actually awarded to that party against the aided person and those to which that party would have been entitled if section 45 had not affected the aided person's liability.
- (3) In considering any such application, the Commissioner must have regard to the following matters:
- (a) the conduct of the parties to the proceedings;
  - (b) the court's findings under section 45(2);
  - (c) the hardship that would be caused to the applicant if the costs were not paid by the Commissioner.
- (4) For the purposes of subsection (3)(c), the Commissioner may require any person to furnish information on the financial circumstances and needs of the applicant.
- (5) If, having regard to the matters specified in subsection (3) and to any information received under subsection (4), and to all relevant circumstances, the Commissioner considers that any payment should be made by the Commissioner to the applicant, the Commissioner may determine accordingly and must make the payment.

- (6) The Commissioner may recover any payment made under this section from the aided person as a debt due to the Commissioner, unless the payment relates to an order made under section 45(5).
- (7) The Commissioner may make a payment under this section to a lawyer who is not a provider under this Act.

Compare: 2000 No 42 s 41

### Subpart 6—Legal aid grants for Treaty of Waitangi claims

#### **47 Applications in respect of proceedings before Waitangi Tribunal**

- (1) This section and sections 48 to 50 apply to an application for legal aid made in respect of any proceedings before the Waitangi Tribunal where—
  - (a) the application is made by a Māori; and
  - (b) the claim to which the application relates is submitted, or is to be submitted, by that Māori for the benefit of a group of Māori of which the applicant is a member.
- (2) The Commissioner may grant an application to which this section applies only if the Commissioner is satisfied—
  - (a) that the case is one that requires legal representation, having regard to the nature of the proceedings and to the interest of the group of Māori for whose benefit the claim is submitted or is to be submitted; and
  - (b) that the group of Māori would suffer substantial hardship if aid were not granted; and
  - (c) that the interest of that group of Māori is not sufficiently protected by any other claim.
- (3) The Commissioner must take into account the information supplied by the Waitangi Tribunal under section 49 when determining whether or not to grant legal aid to the applicant and may, in the light of that information,—
  - (a) grant legal aid to the applicant subject to such conditions as he or she thinks fit relating to the purposes for which that aid is granted, or the period for which that aid is granted, or both; or
  - (b) defer his or her determination of the application for any period he or she thinks fit; or
  - (c) decline the application.
- (4) Nothing in this section prevents an applicant from making a further application for legal aid in respect of the proceedings to which the first application relates.

Compare: 2000 No 42 s 42

#### **48 Assessment of financial resources**

- (1) In determining whether the group of Māori for whose benefit the claim to which the application relates is made would suffer substantial hardship if aid

were not granted, the Commissioner may take into account not only the financial resources of those members of the group who are immediately involved in making the claim, but also the extent to which other members of the group, or any incorporated body that represents the members of the group, or both, might reasonably be expected to contribute towards the costs of the proceedings.

- (2) The Commissioner may, in his or her discretion, refuse to grant the application if the applicant does not supply sufficient information concerning the financial resources of such persons and bodies as the Commissioner may specify for the purposes of making a determination referred to in subsection (1).
- (3) In determining whether to refuse to grant an application on the ground specified in subsection (2), the Commissioner must consider and have regard to the following matters:
  - (a) whether the applicant has made all reasonable endeavours to obtain the information required to be supplied to the Commissioner under that subsection:
  - (b) whether the matter in respect of which the application is made is of sufficient importance or complexity to warrant the granting of the application even though that information has not been supplied:
  - (c) whether it would be unjust to refuse to grant the application merely because that information has not been supplied.
- (4) In subsection (1), **incorporated body** includes—
  - (a) a Māori Trust Board (within the meaning of section 2(1) of the Maori Trust Boards Act 1955):
  - (b) a Māori incorporation (within the meaning of section 4 of Te Ture Whenua Maori Act 1993):
  - (c) a trust constituted under Part 12 or section 338 of Te Ture Whenua Maori Act 1993:
  - (d) a trust continued as an ahu whenua trust by section 354 of Te Ture Whenua Maori Act 1993.

Compare: 2000 No 42 s 43

#### **49 Commissioner to refer application to Waitangi Tribunal**

- (1) Before determining an application to which this section applies, the Commissioner must refer the application to the Waitangi Tribunal for the purpose of obtaining a report containing information required by regulations.
- (2) If, at any time, the Commissioner believes that the circumstances of the applicant or the application have changed, the Commissioner may seek an up-to-date report from the Waitangi Tribunal.
- (3) The Waitangi Tribunal must supply to the Commissioner the information sought under this section.

Compare: 2000 No 42 s 44

**50 Repayment under grant of legal aid**

- (1) A condition requiring repayment of an amount under a grant of legal aid made under section 47 may be made only in accordance with this section.
- (2) The applicant, or any person or body whose resources are taken into account for the purposes of making a determination referred to in section 48(1), or both, may be required to make a repayment towards the cost of legal services.
- (3) The total of the repayment required to be paid under a grant of legal aid made under section 47 must not exceed an amount that is fair and reasonable, having regard to—
  - (a) the resources of the applicant and the financial resources of those persons and bodies whose resources are so taken into account; and
  - (b) the likely cost of the proceedings.
- (4) Every repayment required in accordance with this section under a grant of legal aid is recoverable in the same way as any other repayment required to be paid under this Act.

Compare: 2000 No 42 s 45

**Subpart 7—Reconsideration, review, and appeals of legal aid decisions***Reconsideration***51 Reconsideration**

- (1) A person (who may be an aided person or an applicant for legal aid) who is aggrieved by a decision of the Commissioner that affects that person, may apply in the prescribed manner to the Commissioner for a reconsideration of the decision.
- (1A) A lead provider whose claim has been declined under section 99(5) may apply in the prescribed manner to the Commissioner for a reconsideration of the decision to decline the claim.
- (2) An application must, subject to subsection (3), be made within 20 working days after the date on which notice of the relevant decision is given to the person.
- (3) The Commissioner may accept a late application no later than 3 months after the date on which notice of the relevant decision was given to the person if the Commissioner is satisfied that exceptional circumstances prevented the application from being made within 20 working days after the date on which notice was given.
- (4) A failure by the Commissioner to advise a person of his or her right to seek a reconsideration does not of itself establish exceptional circumstances for the purposes of subsection (3).

- (5) The Commissioner must delegate the responsibility for reconsidering the decision to a person other than the one who made the original decision.
- (6) The Commissioner may decline to reconsider a decision if the Commissioner has already reconsidered that decision or a decision relating to substantially the same issue.
- (7) A person must not, other than under section 52(3), apply for a review of a decision of the Commissioner unless the person has first sought and obtained a reconsideration of that decision under this section.

Compare: 2000 No 42 ss 29, 55(a)

Section 51(1A): inserted, on 2 September 2013, by section 16(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 51(2): amended, on 2 September 2013, by section 16(2) of the Legal Services Amendment Act 2013 (2013 No 43).

### *Reviews*

#### **52 Grounds for review**

- (1) An aided person or an applicant for legal aid may apply to the Tribunal for a review of the Commissioner's reconsideration of a decision referred to in subsection (2) on the grounds that it is—
  - (a) manifestly unreasonable; or
  - (b) wrong in law.
- (2) The decisions that may be reviewed are decisions that affect the applicant for review, and relate to any 1 or more of the following:
  - (a) an application for legal aid:
  - (b) any conditions imposed under section 18 or 47 on a grant of legal aid:
  - (c) any amount payable by an aided person, whether as an interim repayment or a repayment, under a grant of legal aid:
  - (d) the maximum grant under a grant of a legal aid:
  - (da) any decision to depart from, or to refuse to depart from, fees prescribed by regulations under section 114(1)(cc):
  - (e) the withdrawal of, or amendment to, a grant of legal aid:
  - (f) the enforcement of any condition imposed under section 18 or 47 on a grant of legal aid:
  - (g) any changes to, or dealings with, a charge on property arising out of a grant of legal aid:
  - (h) an application under section 46.
- (3) A party who has applied to the Commissioner for payment of costs under section 46 may apply to the Tribunal for a review of the Commissioner's decision under that section on the grounds that the decision is—

- (a) manifestly unreasonable; or
  - (b) wrong in law.
- (3A) A lead provider may apply to the Tribunal for a review of the Commissioner's reconsideration of a decision referred to in section 51(1A) on the ground that it is—
- (a) manifestly unreasonable; or
  - (b) wrong in law.
- (4) In this section, **decision** includes a failure or refusal to make or reconsider a decision.

Compare: 2000 No 42 s 54

Section 52(2)(da): inserted, on 2 September 2013, by section 17(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 52(3A): inserted, on 2 September 2013, by section 17(2) of the Legal Services Amendment Act 2013 (2013 No 43).

### **53 Application for review**

- (1) An application for review must, subject to subsection (2), be made in the prescribed manner to the chairperson of the Tribunal within 20 working days after the date on which notice of the relevant decision is given to the applicant.
- (2) The chairperson of the Tribunal may accept a late application no later than 3 months after the date on which notice of the relevant decision was given to the applicant if the chairperson is satisfied that exceptional circumstances prevented the application from being made within 20 working days after the date on which notice was given.
- (3) In deciding whether to accept a late application for review under subsection (2), the chairperson must have regard to whether the applicant made a late application for reconsideration of the original decision, and the applicant's reasons for that late application.

Compare: 2000 No 42 s 55

### **54 Powers and duties of chairperson of Tribunal on receipt of application for review**

On receipt of an application for review, the chairperson of the Tribunal—

- (a) may require the Commissioner or any other person to provide any information relating to the original decision, the reconsideration, or the application for review; and
- (b) must assign 1 member of the Tribunal (who may be the chairperson or another member) to review the Commissioner's reconsideration of the decision; and
- (c) must provide a copy of the application for review to the Commissioner.

Compare: 2000 No 42 s 55A

**55 Review of decision by Tribunal**

- (1) For the purposes of conducting and determining a review, the Tribunal consists of 1 member of the Tribunal.
- (2) The Tribunal may require the Commissioner to provide either or both of the following:
  - (a) all information held by the Commissioner relating to the reconsideration and the original decision:
  - (b) a written report setting out the considerations to which the Commissioner had regard in making the decision and when reconsidering it.
- (3) The Tribunal may receive and obtain from any person any submission, statement, document, information, or matter that may, in its opinion, assist it to deal effectively with the review before it.
- (4) The review must be conducted on the papers, with all reasonable speed.

Compare: 2000 No 42 s 56

**56 Determination of review**

- (1) The Tribunal may determine a review by confirming, modifying, or reversing the decision under review.
- (2) Every determination by the Tribunal must be accompanied by a brief summary of the reasons for it.

Compare: 2000 No 42 s 57

**57 Tribunal may direct Commissioner to reconsider**

- (1) The Tribunal may, instead of determining a review, give a direction to the Commissioner to reconsider all or any part of the decision to which the review relates.
- (2) If the Tribunal gives a direction under subsection (1),—
  - (a) the Tribunal must give reasons for the direction and may set out the matters that the Commissioner must take into account when reconsidering the decision; and
  - (b) the Commissioner must reconsider the decision, taking into account the reasons for the direction and any matters set out by the Tribunal.

Compare: 2000 No 42 s 58

**58 Chairperson may direct publication of Tribunal decisions**

The chairperson of the Tribunal may direct such publication of decisions of the Tribunal as the chairperson considers necessary or desirable in the public interest.

*Appeals and references on question of law***59 Appeal on question of law**

If the Commissioner or an applicant considers that the Tribunal's determination is wrong in law, the Commissioner or the applicant (as the case may be) may appeal to the High Court on the question of law, and the appeal must be dealt with in accordance with the rules of court.

Compare: 2000 No 42 s 59

**60 Appeals to Court of Appeal and Supreme Court**

Subpart 8 of Part 6 of the Criminal Procedure Act 2011 applies as far as applicable with the necessary modifications to a decision of the High Court on an appeal under section 59 as if the decision had been made under section 300 of that Act.

Section 60: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**61 References on questions of law to High Court**

The chairperson of the Tribunal may state a case for the opinion of the High Court on any point of law that arises on a review under this subpart of a decision of the Commissioner.

Compare: 2000 No 42 s 61

**Subpart 8—Legal Aid Tribunal****62 Legal Aid Tribunal established**

- (1) This section establishes the Legal Aid Tribunal.
- (2) The Tribunal consists of the chairperson and other members appointed under section 64.

**63 Functions of Tribunal**

The functions of the Tribunal are to—

- (a) consider applications for review made to it under section 53;
- (b) conduct and determine reviews of decisions it has jurisdiction to review under this Act.

**64 Appointment of members of Tribunal**

- (1) The Governor-General must, on the recommendation of the Minister,—
  - (a) appoint members of the Tribunal of sufficient number to deal promptly with all reviews and who between them have experience in a range of legal areas and types of proceedings; and
  - (b) appoint one of the members as the chairperson of the Tribunal.
- (2) A person must not be appointed as a member of the Tribunal who—



- (a) is not a lawyer; or
  - (b) is, or has been within the past 5 years, an employee of the Legal Services Agency, a member of the Board of the Agency (within the meaning of the former Act), or an employee of the Ministry.
- (3) A person must not be appointed chairperson unless he or she has held a practising certificate as a barrister or solicitor for at least 7 years.
- (4) If the person to be appointed chairperson is a provider, his or her approval to provide legal aid services under this Act ceases when the person assumes office as chairperson.

Compare: 2000 No 42 s 62

### **65 Chairperson of Tribunal**

- (1) The primary function of the chairperson is to ensure that the Tribunal performs its functions in accordance with this Act in an efficient and effective manner.
- (2) The chairperson has all the powers necessary in order to perform his or her functions, including the power to—
- (a) make the arrangements necessary to ensure each member of the Tribunal is able to perform his or her functions as a member of the Tribunal;
  - (b) issue practice notes (not inconsistent with this Act or the regulations) for regulating the practice and procedure of the Tribunal;
  - (c) develop a code of conduct for members of the Tribunal;
  - (d) require particular members of the Tribunal to determine particular reviews.

### **66 Delegation by chairperson of Tribunal**

- (1) The chairperson of the Tribunal may delegate any of the chairperson's functions, duties, and powers to a member of the Tribunal who the chairperson is satisfied has the capability, skills, and experience to perform and exercise those functions, duties, and powers.
- (2) A delegation—
- (a) must be in writing; and
  - (b) must be to a named person; and
  - (c) is revocable at any time, in writing; and
  - (d) does not prevent the performance or exercise of a function, duty, or power by the chairperson.
- (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

- (5) A person to whom any functions, duties, or powers are delegated must be paid remuneration and expenses (if any) determined in accordance with clause 4 of Schedule 3 for work undertaken in that capacity.

Compare: 2000 No 42 s 62A

**67 Further provisions that apply to Tribunal in Schedule 3**

Part 1 of Schedule 3 contains further provisions that apply to the Tribunal.

**Part 3**

**Administration of legal services system**

**Subpart 1—Functions of Secretary for Justice and Legal Services  
Commissioner**

*Secretary for Justice*

**68 Functions of Secretary for Justice**

- (1) The functions of the Secretary under this Act are—
- (a) to establish, maintain, and purchase high-quality legal services in accordance with this Act;
  - (b) to perform any functions that are conferred or imposed on the Secretary by or under this Act;
  - (c) to perform any other functions relating to legal services that are conferred or imposed on the Secretary by or under any other Act.
- (2) For the purposes of performing his or her functions, the Secretary may—
- (a) assess and determine the need for legal services by people with insufficient means; and
  - (b) specify legal services to which subpart 2 applies; and
  - (c) determine the method or methods for the delivery of legal services; and
  - (d) determine the allocation of legal services—
    - (i) on the basis of the method or methods of delivery that the Secretary considers appropriate for the type of legal service to be provided; or
    - (ii) in any other manner that the Secretary considers appropriate; and
  - (e) subject to this Act, disestablish any legal services established under this Act; and
  - (f) deliver any legal services established under this Act; and
  - (g) undertake or fund law-related research and education; and
  - (h) exercise any other power conferred on the Secretary by this Act or any other enactment.

## **69 Methods of delivery of legal services**

Without limiting section 68(2)(c), the methods of delivery of legal services may include—

- (a) making arrangements, subject to the Lawyers and Conveyancers Act 2006, for the services of non-lawyers to be made available:
- (b) entering into agreements with individual lawyers, groups of lawyers, or law firms for the provision of legal services:
- (c) employing salaried lawyers to provide legal services:
- (d) entering into contracts with community law centres to provide community legal services.

### *Legal Services Commissioner*

## **70 Legal Services Commissioner**

- (1) A person must be appointed under the State Sector Act 1988 to hold office as Legal Services Commissioner.
- (2) The person to be appointed Commissioner must be an existing employee of the Ministry or be appointed an employee of the Ministry when appointed Commissioner.
- (3) The Commissioner must, except to the extent that section 71(2) applies, act under the direction of the Minister and the Secretary.

Compare: 2000 No 42 s 91

## **71 Functions of Commissioner**

- (1) The Commissioner has the following functions:
  - (a) to grant legal aid in accordance with this Act and the regulations:
  - (b) to determine legal aid repayments where legal aid is granted:
  - (c) to assign a provider of legal aid services or specified legal services to an aided person:
  - (d) in relation to salaried lawyers,—
    - (i) to decide the allocation of cases among salaried lawyers:
    - (ii) to oversee the conduct of legal proceedings conducted by salaried lawyers:
    - (iii) to manage the performance of salaried lawyers:
  - (e) to carry out any other function conferred on the Commissioner by the Minister, by the Secretary, or by or under this Act or any other enactment.
- (2) The Commissioner must act independently when performing any function stated in subsection (1)(a) to (d).

Compare: 2000 No 42 s 92

**72 Commissioner may delegate powers, functions, or duties**

- (1) The Commissioner may, as he or she thinks fit, delegate to any person any of his or her powers, functions, or duties under this Act or any other enactment.
- (2) A delegation under subsection (1)—
  - (a) must be in writing; and
  - (b) may be made subject to any conditions or restrictions that the Commissioner thinks appropriate, including any factors that must be taken into account when the delegation is exercised; and
  - (c) may be made generally or in any particular case; and
  - (d) is revocable at will; and
  - (e) does not affect or prevent the exercise of any power or the performance of any function or duty by the Commissioner; and
  - (f) does not affect the responsibility of the Commissioner for the actions of any person acting under delegation; and
  - (g) continues according to its tenor despite any change in the person holding office as the Commissioner.

Compare: 2000 No 42 s 62A; 2002 No 12 s 8(5); 2008 No 72 s 17

**73 Powers of delegate**

- (1) A person who is delegated any powers, functions, or duties under section 72—
  - (a) may, with the prior written approval of the Commissioner, delegate those powers, functions, or duties to any other person:
  - (b) may, subject to any conditions or restrictions, exercise or perform those powers, functions, or duties in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (2) Every person purporting to act under any delegation under section 72 is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

**Subpart 2—Quality assurance system for providers***Providers of legal services***74 Application of this subpart**

This subpart applies to—

- (a) every provider of legal aid services; and
- (b) every provider of specified legal services; and
- (c) every person who applies for approval to provide legal aid services or specified legal services.

**75 No person may provide legal aid service or specified legal service unless approved**

A person must not provide a legal aid service or specified legal service unless—

- (a) the person is approved by the Secretary to provide that service; and
- (b) the person complies with the conditions (if any) of that approval.

**76 Application for approval to provide legal aid services or specified legal services**

An application for approval to provide legal aid services or specified legal services must be made to the Secretary in the prescribed manner.

**77 Approval**

- (1) The Secretary may give a person approval to provide 1 or more legal aid services or specified legal services if the Secretary is satisfied that the person meets the criteria prescribed in regulations.
- (2) The Secretary may impose conditions on the approval. The conditions that may be imposed are those prescribed in regulations.
- (3) The approval—
  - (a) must be in writing;
  - (b) must state the conditions, if any, of the approval;
  - (c) must state the duration of the approval;
  - (d) must state the particular legal aid services or specified legal services that the provider is approved to provide;
  - (e) does not confer an entitlement on the provider to provide the services to which the approval relates.
- (4) The Secretary must provide reasons for his or her decision to give or decline approval.
- (5) The Secretary may give a person a temporary approval to provide 1 or more legal aid services or specified legal services if—
  - (a) the person has applied for approval to provide those services; and
  - (b) the Secretary considers that giving the temporary approval is necessary to meet a need for those services.
- (6) Subsections (2) and (3) apply to a temporary approval as if it were an approval.
- (7) The Secretary must, after giving an approval or temporary approval, give a copy of it to the New Zealand Law Society.

Section 77(2): amended, on 2 September 2013, by section 18 of the Legal Services Amendment Act 2013 (2013 No 43).

**78 Selection committees**

- (1) The Secretary may establish 1 or more selection committees to—
  - (a) assess applications for approval to provide legal aid services or specified legal services; and
  - (b) advise the Secretary of the suitability of those applicants.
- (2) The Secretary—
  - (a) must appoint a representative from the Ministry as chairperson of the committee; and
  - (b) must appoint to the committee a lawyer—
    - (i) from a group of lawyers nominated by the New Zealand Law Society as being suitable for appointment to the committee; and
    - (ii) who the Secretary is satisfied is suitable for appointment and has expertise in the areas of law relevant to the committee's work; and
  - (c) may appoint any other suitably qualified people to the committee whom the Secretary thinks fit.

**79 Performance review committee**

- (1) The Secretary must establish a performance review committee.
- (2) The function of the committee is to assess and advise the Secretary of any matter referred to the committee by the Secretary relating to the performance of a provider.
- (3) The Secretary may make a referral to the committee if—
  - (a) the Secretary reasonably believes that a provider of legal aid services or specified legal services has failed to comply with any condition of his or her approval, or any provision of this Act or the regulations; and
  - (b) the Secretary considers that the person's failure, if proven, would justify cancellation or modification of the person's approval.
- (4) The members of the committee must be appointed by the Secretary.
- (5) The Secretary must appoint a member with at least 7 years' legal experience as chairperson of the committee.
- (6) The Committee must consist of members who, collectively,—
  - (a) have expertise in the areas of law in which the provider is providing legal aid services or specified legal services; and
  - (b) understand the needs and interests of courts, aided persons, and the legal profession; and
  - (c) have expertise in financial management in the State sector.

**80 Further provisions relating to committees in Schedule 3**

Part 2 of Schedule 3 contains further provisions that apply to selection committees and the performance review committee.

**81 Obligations relating to professional conduct**

- (1) The fact that a provider provides legal aid services or specified legal services under this Act does not in any way affect that provider's obligations under any rules or codes of conduct of any professional body to which that provider belongs.
- (2) The fact that a lawyer provides legal aid services or specified legal services under this Act does not in any way affect—
  - (a) his or her rights, obligations, responsibilities, or duties as a lawyer; or
  - (b) the relationship between, or the rights of, the lawyer and his or her client or any privilege arising out of that relationship.
- (3) Subsections (1) and (2) are subject to any express provisions of this Act.

Compare: 2000 No 42 s 65

**82 Review of decisions of Secretary regarding approvals**

- (1) A person may apply to the Review Authority for a review of a decision of the Secretary in respect of that person—
  - (a) declining the person's application for approval to provide 1 or more legal aid services or specified legal services;
  - (b) imposing any condition on the person's approval to provide 1 or more legal aid services or specified legal services;
  - (c) imposing any interim restriction on the person under section 101;
  - (d) imposing any sanction on the person under section 102;
  - (e) cancelling the person's approval under section 103.
- (2) An application for review must be lodged with the Review Authority within 20 working days from the date of notice of the Secretary's decision.
- (3) The Review Authority may accept a late application no later than 3 months after the date on which notice of the relevant decision was given to the person, if the Review Authority is satisfied that exceptional circumstances prevented the application from being made within 20 working days after the date on which notice is given.

**83 Judicial review**

A person may not apply for judicial review of any decision made under this subpart until the person has sought and obtained a review of the Secretary's decision under section 82.

*Review Authority***84 Review Authority established**

- (1) This section establishes the Review Authority.
- (2) The Minister must appoint 1 person to be the Review Authority and may appoint 1 or more Deputy Review Authorities.
- (3) A person appointed under this section must be enrolled as a barrister and solicitor of the High Court of New Zealand and must have at least 7 years' legal experience.

Section 84(2): amended, on 2 September 2013, by section 19(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 84(3): amended, on 2 September 2013, by section 19(2) of the Legal Services Amendment Act 2013 (2013 No 43).

**85 Function of Review Authority**

- (1) The function of the Review Authority is to review decisions of the Secretary set out in section 82(1).
- (2) The Review Authority may review a decision of the Secretary only on the application of a person in respect of whom the decision is made.

**86 Decisions of Review Authority**

- (1) The Review Authority may determine a review by confirming, modifying, or reversing the decision under review.
- (2) The Review Authority must provide reasons for its decision.
- (3) The Review Authority's decision is binding on the Secretary and the person to whom the decision applies.

**87 Further provisions in Schedule 3**

Part 3 of Schedule 3 contains further provisions that apply to the Review Authority.

**87A Deputy Review Authority**

- (1) A Deputy Review Authority appointed under section 84(2) has the functions, powers, duties, and immunities of the Review Authority and every reference to the Review Authority in sections 85 to 87 and in Part 3 of Schedule 3 is taken to include a reference to a Deputy Review Authority.
- (2) This section is subject to section 87B.

Section 87A: inserted, on 2 September 2013, by section 20 of the Legal Services Amendment Act 2013 (2013 No 43).

**87B Scope of functions of Deputy Review Authority**

- (1) A Deputy Review Authority may review decisions only if—
  - (a) the Review Authority is absent from duty for any reason; or



- (b) there is a vacancy in the office of Review Authority; or
  - (c) the Review Authority has assigned a decision or a class of decision to the Deputy Review Authority in the interests of avoiding—
    - (i) delay; or
    - (ii) the perception of, or any actual, conflict of interest or other impropriety.
- (2) If there are 2 or more Deputy Review Authorities, the Review Authority must nominate 1 Deputy Review Authority (the **nominated deputy**) to exercise the power under subsection (1)(c) and that nominated deputy may then exercise that power when the Review Authority is absent from duty (for any reason) or when there is a vacancy in the office of the Review Authority.
- (3) A nomination—
- (a) must be in writing; and
  - (b) is revocable at any time, in writing, by the person who made it or by his or her successor in office; and
  - (c) until revoked, continues in force according to its terms even if the person who made it has ceased to hold the office of Review Authority.
- (4) Despite subsection (1), if, during the absence of the Review Authority from duty (for any reason) or a vacancy in the office of the Review Authority, there are 2 or more Deputy Review Authorities, a Deputy Review Authority may review a decision in accordance with subsection (1) only if—
- (a) that Deputy Review Authority is the nominated deputy; or
  - (b) the decision has been, or is part of a class of decision that has been, assigned to that Deputy Review Authority under subsection (1)(c).
- (5) The fact that a Deputy Review Authority purports to exercise or perform, or to have exercised or performed, any function, duty, or power under this section or under an assignment under subsection (1)(c) or under a nomination under subsection (2) is, in the absence of proof to the contrary, sufficient evidence of the person's authority to do so.

Section 87B: inserted, on 2 September 2013, by section 20 of the Legal Services Amendment Act 2013 (2013 No 43).

### *Quality assurance checks*

#### **88 Ministry may carry out quality assurance checks**

The Ministry may carry out quality assurance checks on providers of legal aid services or specified legal services to ensure that the services are delivered in an effective and efficient manner.

*Examination of claims made by providers***89 Commissioner may examine claims**

The Commissioner may examine a claim or part of a claim by a provider of legal aid services or specified legal services if—

- (a) it appears excessive;
- (b) the aided person to whom the claim relates has requested the examination;
- (c) the Commissioner has received information that suggests the services for which the claim is made have not been provided.

**90 Aided person may request examination of cost of services**

- (1) An aided person may request the Commissioner to examine the cost of services under a grant of legal aid to the person if he or she considers that the lead provider—
  - (a) has claimed in respect of more time than was actually spent providing services under the grant; or
  - (b) has claimed for disbursements that were not in fact used in providing these services.
- (2) The aided person may request an examination at any time before the 20th day (or such longer time as the Commissioner, on application, allows) after the person has received notice of the cost of services.

Compare: 2000 No 42 s 38

**91 Secretary may audit providers**

- (1) The Secretary may at any time audit any provider of legal aid services or specified legal services.
- (2) Every audit must be conducted by an auditor.
- (3) The purpose of the audit is to enable the Secretary to assess and review the quality and value of the services provided by the provider that have been, or may be, paid for by the Secretary.
- (4) The audit may, without limitation, include an assessment of—
  - (a) the provider's compliance with—
    - (i) practice standards;
    - (ii) any conditions imposed on the provider's approval;
    - (iii) the terms and conditions of the service contract;
    - (iv) guidelines and policies issued or made by the Secretary; and
  - (b) any substantial or unresolved complaints concerning delivery of legal aid services or specified legal services.

Compare: 2000 No 42 s 78

## 92 Compliance with audits

- (1) A provider who is subject to an examination or audit must co-operate with the auditor and, in particular, must—
  - (a) ensure that the auditor is given access at all reasonable times to all documents under the control of the provider that relate to the claim under examination, or to matters for which the provider has claimed or may claim payment from the Secretary (as the case may require); and
  - (b) use his or her best endeavours to ensure that questions relating to the claim being examined, or to any matter to which the audit relates, are answered fully, frankly, promptly, and in the form (written or oral) required by the auditor; and
  - (c) permit, and if necessary assist, the auditor to copy any document or to reproduce, in usable form, information recorded or stored in a document.
- (2) A provider is not obliged to comply with subsection (1) until the auditor shows the provider a copy of the auditor's authority from the Secretary to conduct the examination or audit.
- (3) If an auditor considers that a provider who is being examined or audited is not complying, or has not adequately complied, with subsection (1), the auditor must notify the Secretary and the provider.
- (4) On receipt of a notice, the Secretary may suspend payments of any claim currently lodged with the Secretary by the provider, and the payments may remain suspended until such time as the Secretary is satisfied that the provider is co-operating with the auditor.
- (5) Continuing failure to co-operate may be an offence under section 113.
- (6) Section 109 applies to the disclosure of privileged communications under this section.

Compare: 2000 No 42 s 79

## Subpart 3—Community law centres

### *Community law centres*

## 93 Definition of community law centres

- (1) For the purposes of this Act, a **community law centre** is a body whose function includes the provision of community legal services.
- (2) A body may, for the purposes of this Act, be a community law centre even if it performs functions in addition to those described in subsection (1).

Compare: 2000 No 42 s 85

## 94 Secretary may enter into contracts with community law centres

- (1) The Secretary may enter into a contract with 1 or more community law centres to purchase community legal services as the Secretary determines appropriate.

- (2) The money provided by the Secretary to a community law centre under a contract under this section must come from either or both—
- (a) the Special Fund; or
  - (b) any other money.
- Compare: 2000 No 42 s 87(1), (3)

### **95 Reporting on funding of community law centres**

- (1) At the end of each financial year, the Secretary must provide a report to the Minister on—
- (a) the amount of money received from the Special Fund for that financial year; and
  - (b) how the money from the Special Fund was spent in that financial year; and
  - (c) the amount of money received from the Special Fund that has not been used.
- (2) The Secretary must ensure that any money received from the Special Fund that is not spent in the financial year is retained and transferred for the future funding of community law centres.

### **96 Secretary may audit community law centres**

- (1) The Secretary may, at any time, audit the services provided by a community law centre under a contract for services.
- (2) The audit must be conducted by an auditor.
- (3) The purpose of the audit is to enable the Secretary to assess and review—
- (a) the quality and value of the services provided by the community law centre that have been, or may be, funded by the Secretary; and
  - (b) any other matter that the Secretary or auditor considers relevant to the provision of community legal services that have been funded or partially funded under this Act.
- (4) Section 109 applies to the disclosure of privileged information for the purposes of an audit taken under this section.

## **Subpart 4—Payment for legal aid work, enforcement, and other matters relating to providers**

### *Payment for legal aid work*

### **97 Lead provider to claim for payment**

- (1) Claims for payment in respect of legal aid services or specified legal services provided must be made by the lead provider to the Secretary in the prescribed manner and within the time frame referred to in section 98.

- (2) A claim for payment must show—
- (a) the fees claimed by, or the charges attributable to, the lead provider, less the user charge required to be paid by the aided person; and
  - (b) the fees claimed by, or the charges attributable to, any other provider who acted on the matter; and
  - (c) the disbursements claimed by the lead provider and any other provider who acted on the matter.

Compare: 2000 No 42 s 74

Section 97(2)(a): amended, on 2 September 2013, by section 21 of the Legal Services Amendment Act 2013 (2013 No 43).

### **98 Time frame for claiming for payment**

- (1) The time frame for claiming for payment for legal aid services or specified legal services is the time frame set by regulations unless the Secretary, in relation to an individual matter, specifies that a different time frame applies.
- (2) Nothing in section 14 or 28 affects this section.

### **99 Secretary to refer claim to Commissioner for decision**

- (1) On receiving a claim for payment from a lead provider, the Secretary must refer the claim to the Commissioner.
- (2) The Commissioner may—
- (a) approve the claim or any part of it; or
  - (b) defer payment of all or part of the claim in order that the deferred part may be examined; or
  - (c) decline payment of the claim or any part of it.
- (3) A payment may be deferred and a claim, or part of a claim, examined if—
- (a) the claim or part of the claim appears to the Commissioner to be excessive in light of the Secretary's standard rates for payment or the Commissioner's experience with comparable claims; or
  - (b) an aided person has requested an examination of the cost of services under section 90.
- (4) The Commissioner must decline—
- (a) any claim to the extent that it exceeds the maximum grant specified in the grant; and
  - (b) where a claim or part of a claim is for, or is determined by the Commissioner to be for, work of a kind for which a fee is prescribed by regulations pursuant to section 114(1)(ca) or authorised pursuant to section 114(1)(cc), so much of that claim as exceeds the fee so prescribed or authorised; and

- (c) any claim to the extent to which it is for a disbursement of a type not approved for payment by the Commissioner; and
  - (d) any claim or any part of a claim that has been determined to be excessive or inaccurate by an examination under subsection (2); and
  - (e) if the user charge has not been paid by the aided person, an amount of the claim that is the equivalent of that charge.
- (5) The Commissioner may decline any claim that was not made in accordance with the time frame referred to in section 98.

Compare: 2000 No 42 s 75

Section 99(4): replaced, on 2 September 2013, by section 22 of the Legal Services Amendment Act 2013 (2013 No 43).

Section 99(5): inserted, on 2 September 2013, by section 22 of the Legal Services Amendment Act 2013 (2013 No 43).

#### **100 Secretary must pay approved claims**

- (1) The Secretary must pay the lead provider in respect of every claim or part of a claim that is approved by the Commissioner for payment.
- (2) The Secretary must not withhold payment of part of a claim on the ground that another part of the claim has been deferred for examination or declined.

Compare: 2000 No 42 s 76

### *Enforcement*

#### **101 Interim restrictions that may be imposed by Secretary**

- (1) This section applies to any matter relating to a provider's performance being investigated by the performance review committee.
- (2) The Secretary may—
  - (a) place a hold on any payments to be made to the provider that relate to the matter being investigated if the Secretary considers it necessary to do so; and
  - (b) notify the Commissioner of the pending investigation by the performance review committee if the Secretary considers it appropriate to do so.
- (3) On receiving a notice under subsection (2)(b), the Commissioner must cease assigning the provider to aided persons and assign another provider to the aided persons that the provider is currently assigned to.
- (4) A person's approval to provide legal aid services or specified legal services is not affected by any act done under subsection (2) or (3).

#### **102 Sanctions that may be imposed by Secretary**

- (1) In deciding any matter that has been investigated by the performance review committee, the Secretary may, after considering the committee's advice, do any 1 or more of the following:

- (a) modify or cancel a person's approval to provide legal aid services or specified legal services:
  - (b) require that a provider be supervised by another provider approved by the Secretary:
  - (c) bar a person from applying for approval to provide legal aid services or specified legal services for any period of a duration that is between 3 months and 2 years.
- (2) The Secretary may, instead of imposing any sanction, decide to take no further action in relation to the matter.

### **103 Cancellation**

- (1) The Secretary must cancel a provider's approval if—
- (a) the provider has made a false or misleading representation in any application for approval—
    - (i) that has led to the approval being granted:
    - (ii) that has led to the approval being granted on more favourable conditions than would otherwise have been imposed:
  - (b) the provider is convicted of an offence punishable by imprisonment and the conviction reflects on his or her fitness to practise, or tends to bring his or her profession into disrepute:
  - (c) the provider takes an unauthorised payment from or in respect of a person in relation to any legal aid service or specified legal service provided to that person:
  - (d) the provider is no longer entitled to hold a practising certificate:
  - (e) the Disciplinary Tribunal has made any of the following orders under section 242(1) of the Lawyers and Conveyancers Act 2006:
    - (i) striking a practitioner off the roll:
    - (ii) suspending the practitioner from practice:
    - (iii) terminating the practitioner's employment or prohibiting the practitioner from employment by any practitioner or incorporated firm:
  - (f) the Secretary is satisfied that the approval was given by mistake.
- (2) The effect of a cancellation is that the person ceases to be approved to provide the relevant service, and the Secretary is not obliged to pay for any services of that kind provided after the date on which the cancellation takes effect.
- (3) The Secretary must give written notice of the cancellation to the person to whom it applies.
- (4) The written notice must specify—

- (a) when the cancellation takes effect, which must be a date on or after the date on which the Secretary reasonably considers the person will receive the notice or will be deemed to have received it by virtue of section 115(2); and
  - (b) the grounds of the cancellation.
- (5) In any case where a notice of cancellation is posted to a person at the person's last known place of residence or business in New Zealand and the Secretary knows or believes that the address is no longer current, then—
- (a) the notice is not invalid merely because of that knowledge or belief; and
  - (b) the fact that the person has not received the notice is, despite section 115(2), only relevant if it is proved that the failure occurred through no fault of the person.

Compare: 2000 No 42 s 73

Section 103(1)(c): replaced, on 2 September 2013, by section 23(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 103(4)(a): amended, on 2 September 2013, by section 23(2) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 103(5): inserted, on 2 September 2013, by section 23(3) of the Legal Services Amendment Act 2013 (2013 No 43).

### *Further provisions relating to providers*

#### **104 Providers must comply with requirements of Act in prescribed manner**

Every provider must, when doing any thing required by or under this Act, do so in the prescribed manner (if any) unless this Act or the regulations provide otherwise.

#### **105 Providers not to take unauthorised payments**

No provider may take payments from or in respect of a person to whom legal aid services or specified legal services are provided unless the payments are—

- (a) authorised by or under this Act; or
- (b) authorised by the Commissioner acting under the authority of this Act or the regulations.

Compare: 2000 No 42 s 66

#### **106 Providers to pay legal aid disbursements**

Except as otherwise authorised by the Secretary, providers must pay all disbursements relating to a legally aided matter, but may claim for reimbursement of those costs under section 97.

Compare: 2000 No 42 s 67



**107 Providers to protect Commissioner's interests in relation to charges and proceeds of proceedings**

- (1) This section applies to every person who provides legal aid services or specified legal services under a grant of legal aid.
- (2) Every person to whom this section applies—
  - (a) must take all reasonable steps to protect the interests of the Commissioner under a charge in favour of the Commissioner, whether the charge—
    - (i) is approved in accordance with a condition imposed under section 18(3); or
    - (ii) arises by operation of section 36; and
  - (b) has a duty not to do or permit anything that would or might effect the transfer of property subject to a charge in favour of the Commissioner; and
  - (c) must advise the Commissioner if he or she is aware that the aided person has avoided, is avoiding, or is attempting to avoid making payments to the Commissioner from proceeds of proceedings.
- (3) For the purposes of subsection (2)(c), an aided person is deemed to have waived any legal professional privilege that might otherwise prevent a person to whom this section applies from complying with subsection (2)(c).
- (4) If a person to whom this section applies fails to fulfil his or her duties under this section, the money that should have been paid to the Commissioner under a charge or from proceeds of proceedings may be deducted from any money owing by the Commissioner to that person.

Compare: 2000 No 42 s 68

**Subpart 5—Miscellaneous provisions**

*Disclosure of information*

**108 Disclosure of information**

- (1) In relation to an application for legal aid for a civil matter, or for the payment of costs under section 46, every person has the same privileges in relation to giving information, answering questions, and producing documents, papers, and things, as witnesses have in any court.
- (2) Except as provided in this section, neither the Commissioner nor the Tribunal may require any person who is bound or privileged by an enactment or a rule of law to maintain secrecy about a matter to breach secrecy by supplying information or answering questions about the matter or producing documents or things relating to it.

- (3) Despite subsection (2), the Commissioner and the Tribunal are both allowed to require a person who is bound or privileged by an enactment or a rule of law to maintain secrecy to breach that secrecy if—
  - (a) the breach relates to an applicant for legal aid for a civil matter; and
  - (b) the applicant has given consent in writing to the breach.
- (4) A person required to breach secrecy under subsection (3) must comply with the requirement made under that subsection.
- (5) Despite subsection (2), a person may disclose to the Commissioner any communication between the aided person and his or her lawyer, or sent to or by the aided person or his or her lawyer (whether or not the communication is marked “confidential” or “without prejudice”), if—
  - (a) the aided person’s grant of legal aid is in respect of a civil matter; and
  - (b) the purpose of the disclosure is to inform the Commissioner of matters relevant to the withdrawal or amendment of legal aid on the grounds set out in section 30(2)(d).
- (6) The Commissioner may advise any person who disclosed a communication under subsection (5) whether the grant has been withdrawn or amended.

Compare: 2000 No 42 s 109

#### **109 Disclosure of privileged communications under section 92 or 96**

- (1) No rule of law conferring any privilege on communications of a professional character between a lawyer and his or her client may prevent, limit, or affect the production of a file, record, document, or statement or the giving of information under section 92 or 96.
- (2) The production of a file, record, document, or statement or the giving of information under section 92 or 96 does not subsequently affect any legal professional privilege to which the file, record, document, statement, or information may be subject, except for the purposes of—
  - (a) an audit taken under section 92 or 96; or
  - (b) evidence in an investigation by the performance review committee.
- (3) Information produced for the purposes stated in subsection (2)(a) or (b) that is protected by legal professional privilege must not be used—
  - (a) in any proceedings against the client; or
  - (b) in any way that is detrimental to the client.

#### **110 Commissioner may require financial information**

- (1) The Commissioner may require an aided person or applicant for legal aid to provide up-to-date information about the person’s financial means if the Commissioner requires the information to make any decision under this Act.

- (2) The Commissioner may seek verification from a third party of any information provided under this section, but must not seek verification until it has notified the aided person or applicant that it intends to do so.

Compare: 2000 No 42 s 109A

### *Offences*

#### **111 Misrepresentation, etc**

- (1) Every aided person or applicant for legal aid commits an offence and is liable on conviction to a fine not exceeding \$2,000 who—
- (a) fails without reasonable excuse to comply with any provision of this Act, or the regulations requiring the person to furnish information or answer questions or produce any document or thing; or
  - (b) knowingly provides false or misleading information, or knowingly answers any question in a false or misleading way; or
  - (c) intentionally avoids payment of the Commissioner's interest in any proceeds of proceedings.
- (2) If a person is convicted of an offence under subsection (1), the Commissioner may recover from that person, as a debt due to the Commissioner, any amount paid under a grant of legal aid.
- (3) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence under this section ends on the date that is 2 years after the date on which the offence was committed.

Compare: 2000 No 42 s 110

Section 111(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 111(3): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **112 Offence in relation to applications for approval**

Every provider commits an offence, and is liable on conviction to a fine not exceeding \$5,000, who makes a false or misleading representation in relation to any application for, or that relates to an approval to provide, legal aid services or specified legal services.

Compare: 2000 No 42 s 111

Section 112: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **113 Offences in relation to examination and audit**

Every provider or former provider commits an offence and is liable on conviction to a fine not exceeding \$5,000 who, having received a notice under section 92(3), fails to comply with section 92(1) to such a degree that the auditors con-

ducting the examination or audit to which the notice relates are unable to satisfactorily conclude the examination or audit.

Compare: 2000 No 42 s 112

Section 113: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Regulations*

#### **114 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) determining the amount or amounts payable by an aided person (other than as a repayment under section 50) by—
    - (i) prescribing the amount or amounts, or a method of calculating an amount or amounts, payable by an aided person as an interim repayment:
    - (ii) prescribing the amount or amounts, based on income and capital, payable by an aided person as a repayment:
    - (iii) prescribing a method of calculating an amount or amounts, based on income and capital, payable by an aided person as a repayment:
  - (b) prescribing a method or methods for calculating what maximum grant, if any, should be set under a grant of legal aid in respect of proceedings other than victims' claims proceedings:
  - (c) prescribing for the purposes of section 23(4) the amount of the maximum grant to be specified for every grant of legal aid in respect of victims' claims proceedings:
  - (ca) prescribing fees, whether by specifying amounts or providing for 1 or more methods of calculating amounts, for items of work undertaken by providers for the purposes of proceedings (other than victims' claims proceedings) described in the regulations, which fees may differ depending on factors stated in the regulations, including, without limitation, 1 or more of the following:
    - (i) the subject matter of the proceeding:
    - (ii) the court or tribunal in which the proceeding or an application or a matter in the proceeding is to be determined:
  - (cb) exempting, in accordance with subsection (8), any class of proceeding from any specified regulation made under paragraph (ca):
  - (cc) providing for the Commissioner to authorise fees that depart from the fees prescribed under paragraph (ca) if, and only if, criteria prescribed under paragraph (cd) apply:

- (cd) prescribing criteria for the purposes of any authorisation that the Commissioner is empowered to give under paragraph (cc):
- (d) determining whether a person is eligible for legal aid by—
  - (i) prescribing maximum levels of income and disposable capital:
  - (ii) prescribing a method of assessing financial means:
- (e) prescribing allowances for use in calculating a person's disposable capital:
- (ea) prescribing the amount of the user charge, including different amounts for user charges relating to different classes of proceeding:
- (f) prescribing deductions that may be made from the cost of services for the purpose of determining the repayment payable by an aided person under a grant of legal aid:
- (g) prescribing the manner in which applications for, and grants of, legal aid in respect of minors, and other people with special requirements, are to be dealt with:
- (h) making provision, in respect of the calculation of the income, disposable capital, or capital of an applicant for legal aid, for all or any of the following:
  - (i) taking into account fluctuations of income:
  - (ii) determining the value of any property:
  - (iii) including in the resources of the applicant any property that has been disposed of:
  - (iv) excluding from the resources of the applicant any liabilities incurred by the applicant for no consideration, or for a grossly inadequate consideration:
  - (v) taking into account any benefit to which the applicant is entitled or that the applicant might receive in connection with property held on trust:
- (i) prescribing matters relating to the way in which the Commissioner administers charges, including prescribing maximum rates of interest that may be charged:
- (ia) specifying kinds of expenses or payments for the purposes of section 33(d):
- (j) prescribing amounts or methods for calculating the cost of services:
- (k) prescribing the way or ways in which the interest under section 40 is to be calculated and, in particular and without limitation, the rate or rates of interest, the periods during which interest accrues, and the circumstances in which, and the intervals at which, interest is compounded:

- (l) increasing, or prescribing a method for increasing, the maximum amount of income or disposable capital for the purposes of determining a person's eligibility for legal aid:
- (m) adjusting, or prescribing a method for adjusting, the maximum amount of repayments for the purposes of section 20:
- (n) prescribing the information that must be contained in a report of the Waitangi Tribunal under section 49:
- (o) exempting, in accordance with subsection (8), any specified class or classes of person or proceeding from the application of—
  - (i) section 10(2) and (4)(a) and (b):
  - (ii) section 18 or 18A:
- (p) in relation to an approval to provide legal aid services or specified legal services,—
  - (i) prescribing the criteria that must be met by a person applying for approval:
  - (ii) prescribing the conditions that the Secretary may impose on an approval:
- (q) prescribing the procedure for—
  - (i) a selection committee or 1 or more selection committees:
  - (ii) the performance review committee:
  - (iii) the Review Authority:
- (r) prescribing any act or thing necessary to supplement or render more effectual the provisions of this Act in relation to the operation of the Tribunal, such as its administration and the procedure for reviews conducted by the Tribunal:
- (s) prescribing the types of offences that are prescribed offences for the purposes of section 9:
- (t) prescribing definitions of capital, income, and disposable capital to be applied for prescribed offences:
- (u) in relation to a prescribed offence,—
  - (i) setting out the manner in which the Commissioner must determine whether the applicant has sufficient means for the purposes of section 9(1):
  - (ii) prescribing the maximum amount of legal aid that may be granted:
  - (iii) prescribing the circumstances in which the Commissioner must, under section 9(2), determine or redetermine an applicant's means in accordance with section 8(3):

- (v) prescribing transitional or savings provisions relating to the coming into force of this Act:
- (w) prescribing the time frame or time frames in which claims for payment for legal aid services or specified legal services may be made, and different time frames may be prescribed for different classes, stages, or levels of complexity of services provided:
- (x) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

*Regulations prescribing amounts*

- (2) When prescribing amounts, or methods of calculating amounts, including the calculation of interest, regulations made under this section may—
  - (a) distinguish between applicants for legal aid on any grounds, for example, the type of proceedings to which the application relates, or the level of income or disposable capital of the applicant; or
  - (b) distinguish between aided persons on any grounds, for example, the type of proceedings to which the grant relates, or the level of income, disposable capital, or capital of the aided person.

*Regulations prescribing costs of services*

- (3) When prescribing an amount or method of calculating the cost of services, regulations may distinguish between applicants for legal aid or aided persons on the basis of the contract held by the provider.

*Regulations prescribing maximum levels of income for determining legal aid eligibility*

- (4) When prescribing maximum levels of income for the purpose of determining an applicant's eligibility for legal aid or when prescribing the maximum amount of repayments payable by an aided person, regulations may take into account whether the applicant or aided person has—
  - (a) a spouse or partner:
  - (b) any dependent children, and the number of dependent children.

(5) *[Repealed]*

(6) *[Repealed]*

(7) *[Repealed]*

*Regulations exempting class of person or proceedings*

- (8) No regulations may be made for the purposes of subsection (1)(o) unless the Minister is satisfied that the proposed exemption is justified on 1 or more of the following grounds:
  - (a) the proposed exemption is in the public interest:
  - (b) the proposed exemption facilitates access to justice:
  - (c) the proposed exemption is just and equitable in the circumstances.

*Regulations providing for transitional or savings provisions*

- (9) Any transitional or savings provisions prescribed in regulations made under subsection (1)(v) are in addition to the provisions of sections 117 to 137.
- (10) All regulations made under subsection (1)(v) that are still in force on the day that is 3 years after the commencement of this section expire at the close of that day.

Compare: 2000 No 42 s 113

Section 114(1)(ca): inserted, on 2 September 2013, by section 24(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(1)(cb): inserted, on 2 September 2013, by section 24(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(1)(cc): inserted, on 2 September 2013, by section 24(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(1)(cd): inserted, on 2 September 2013, by section 24(1) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(1)(ea): inserted, on 2 September 2013, by section 24(2) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(1)(ia): inserted, on 2 September 2013, by section 24(3) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(1)(k): replaced, on 2 September 2013, by section 24(4) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(1)(o)(ii): amended, on 2 September 2013, by section 24(5) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(1)(w): replaced, on 2 September 2013, by section 24(6) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(2): amended, on 2 September 2013, by section 24(7) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(5): repealed, on 2 September 2013, by section 24(8) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(6): repealed, on 2 September 2013, by section 24(8) of the Legal Services Amendment Act 2013 (2013 No 43).

Section 114(7): repealed, on 2 September 2013, by section 24(8) of the Legal Services Amendment Act 2013 (2013 No 43).

*Service***115 Service of notices, etc**

- (1) Any notice or other communication required to be given to any person under this Act or the regulations may be given by delivering it to that person, and may be delivered—
- (a) personally; or
  - (b) by leaving it at that person's usual or last known place of residence or business in New Zealand; or
  - (c) by posting it in a letter addressed to the person at his or her usual or last known place of residence or business in New Zealand.



- (2) If a notice or any other communication is sent to a person by post, then, in the absence of proof to the contrary, the notice or other communication is deemed to have been given to that person when the letter would have been delivered in the ordinary course of post.
- (3) In proving delivery, it is sufficient to prove that the letter was properly addressed and posted.

Compare: 2000 No 42 s 114

Section 115(1)(b): amended, on 2 September 2013, by section 25 of the Legal Services Amendment Act 2013 (2013 No 43).

Section 115(1)(c): amended, on 2 September 2013, by section 25 of the Legal Services Amendment Act 2013 (2013 No 43).

### *Effect of rights conferred by this Act*

#### **116 Effect of rights conferred by this Act**

Any rights or liabilities of an aided person under this Act do not affect—

- (a) the rights or liabilities of other parties to the proceedings; or
- (b) the principles on which the discretion of any court or tribunal is normally exercised.

Compare: 2000 No 42 s 115

## **Part 4**

### **Transitional and savings provisions, amendments to other enactments, and repeals**

#### **Subpart 1—Transitional arrangements for transfer of Legal Services Agency to Ministry of Justice**

#### **117 Legal Services Agency disestablished**

The Crown entity that, immediately before the commencement of this Act, was known as the Legal Services Agency is disestablished.

#### **118 Public Advisory Committee disestablished**

- (1) The Public Advisory Committee established under section 104 of the Legal Services Act 2000 is disestablished.
- (2) No member of the Public Advisory Committee is entitled to compensation as a result of the Committee ceasing to exist.

#### **119 Transfer of assets and liabilities of Legal Services Agency to Ministry**

- (1) On the commencement of this Act, all assets, records, liabilities, and debts of the Legal Services Agency vest in the Ministry.
- (2) This section is subject to sections 124 and 125.

**120 Employees of Legal Services Agency**

- (1) On the commencement of this Act, all employees of the Legal Services Agency are transferred to the Ministry.
- (2) Subsection (1) does not apply to any employee who does not consent to being transferred.

**121 Terms and conditions of transferred employees**

- (1) The employment of a transferred employee must be on terms and conditions no less favourable to the transferred employee than those applying to the employee immediately before his or her transfer.
- (2) Subsection (1)—
  - (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and the Ministry; but
  - (b) does not apply to a transferred employee who, after the transfer, receives any subsequent appointment within the Ministry.

**122 Continuity of employment**

- (1) Every transferred employee becomes an employee of the Ministry on his or her transfer.
- (2) However, for the purposes of this Act and every enactment, law, determination, contract, and agreement relating to the employment of the transferred employee,—
  - (a) the contract of employment of that employee is deemed to have been unbroken; and
  - (b) that employee's period of service with the Legal Services Agency, and every other period of service of that employee that is recognised as continuous service by the Legal Services Agency, is deemed to have been a period of service with the Ministry.

**123 Restriction of compensation for technical redundancy**

- (1) An employee of the Legal Services Agency is not entitled to receive any payment or other benefit from the Legal Services Agency or the Ministry on the ground that his or her position with the Legal Services Agency has ceased to exist if—
  - (a) the position ceases to exist as a result of changes made by this Act; and
  - (b) in connection with the transfer of employees under this Act,—
    - (i) the transfer of the employee would result in substantially equivalent employment in the Ministry (whether or not the employee consents to the transfer); or

- (ii) the employee consents to a transfer that will result in other employment in the Ministry.
- (2) In this section, **substantially equivalent employment** to the employee's employment with the Legal Services Agency is employment in the Ministry that is—
- (a) in substantially the same position; and
  - (b) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
  - (c) on terms that treat the period of service with the previous employer (and any other service recognised by the previous employer as continuous service) as if it were continuous service with the Ministry.

*Matters to be transferred to Commissioner*

**124 Charges vested in Commissioner**

- (1) All charges created by or under the Legal Aid Act 1969, the Legal Services Act 1991, or the Legal Services Act 2000 are vested in the Commissioner.
- (2) Neither the Registrar-General of Land nor any other person charged with keeping any records or registers is obliged, solely by reason of this section, to change the name in those records or registers or in any document.
- (3) It is sufficient proof, in the absence of evidence to the contrary, that a charge is vested in the Commissioner if a person presents to a registrar or any other person a document purporting to be a charge or copy of a charge created by or under any of the Acts specified in subsection (1).
- (4) A charge created by or under any of the Acts specified in subsection (1) must be treated as if it were a charge created by or under section 36 of this Act.
- (5) The provisions of this Act, so far as they are applicable and with any necessary modifications, apply to the charge; and the Commissioner may, for the purposes of subsection (1),—
  - (a) transfer the charge in accordance with section 38; and
  - (b) enforce the charge in accordance with section 39; and
  - (c) write off the amounts secured by the charge in accordance with section 43.

**125 References to Legal Services Board and Legal Services Agency in enactments, instruments, and registers**

On and after the commencement of this Act, every reference in any enactment (other than this Act), or in any instrument or register, to the Legal Services Board or the Legal Services Agency must be construed as a reference to the

Secretary, unless the reference relates to a matter that falls within the Commissioner's functions set out in section 71(1)(a) to (d), in which case it must be construed as a reference to the Commissioner.

## Subpart 2—Transition of matters commenced, approvals granted, and funding provided under former Act

### *Transition of applications for review under former Act*

#### **126 Interpretation**

In sections 127 to 131,—

**final transition day** means the day that is 1 month after the date on which section 62 (which establishes the Legal Aid Tribunal) comes into force

**remaining applications for review** means applications for review made to the Review Panel before the commencement of this Act and includes those applications for review in respect of which a review was commenced but not determined before the commencement of this Act

**Review Panel** means the Legal Aid Review Panel established under section 62 of the former Act.

#### **127 Review Panel continues until close of final transition day**

- (1) Despite the repeal of the former Act, until the close of the final transition day,—
  - (a) the Review Panel continues for the purpose of determining remaining applications for review; and
  - (b) the members of the Review Panel remain members of the Review Panel unless or until they cease to be members in accordance with section 62(6), (7), or (9) of the former Act; and
  - (c) sections 55 to 57, 59, 61 to 63, and 64A of the former Act continue in effect as if they had not been repealed.
- (2) The Ministry must provide the resources and administrative support necessary to enable the Review Panel to perform its functions for the purposes of this section.

#### **128 Review Panel disestablished**

- (1) From the close of the final transition day,—
  - (a) the Review Panel is disestablished, and the term of appointment of every member of the Review Panel expires;
  - (b) all assets and liabilities of the Review Panel, and all records of the Review Panel, vest in the Ministry.

- (2) No member of the Review Panel is entitled to compensation as a result of the expiry under this section of his or her term of office.

Compare: 2000 No 42 s 124

**129 Tribunal must deal with remaining applications**

From the day after the final transition day, the Tribunal is responsible for determining any remaining applications for review.

**130 Applications under section 54(3) of former Act may be made to Tribunal after final transition day**

Despite the repeal of the former Act, a provider or former listed provider may, after the final transition day, apply to the Tribunal for a review under section 54(3) of the former Act of a decision relating to the amount payable by the Legal Services Agency to that provider in respect of any services provided before the commencement of this Act.

**131 Application of this Act and former Act to determination of remaining applications for review, and applications under section 54(3) of former Act**

- (1) The following proceedings must be determined in accordance with subsection (2):
- (a) any remaining applications for review:
  - (b) any application for review under section 54(3) of the former Act.
- (2) For the purpose of any proceedings that must be determined in accordance with this subsection,—
- (a) the provisions of the former Act and the Legal Services Regulations 2006 continue to apply to the matter that is the subject of the proceeding as if those enactments had not been repealed or revoked:
  - (b) the provisions of this Act and the regulations apply only to the manner in which the proceeding must be conducted or processed (for example, matters relating to procedure).

*Legal aid granted and repayments made under former Act*

**132 Legal aid granted and repayments made under former Act**

- (1) Legal aid granted under the former Act is not affected by the repeal of that Act; but after the commencement of this Act, this Act applies to that aid as if it had been granted under this Act.
- (2) On and after the commencement of this Act, an application that was properly made before that date under the former Act must, to the extent that it was not dealt with before that date, be dealt with as if the application had been properly made under this Act.
- (3) A repayment obligation (including any requirement to pay an interim repayment) under a grant of legal aid made under the former Act must be treated as

if it were a repayment obligation under a grant of legal aid made under this Act.

- (4) This section does not apply to a grant of legal aid that is the subject of a remaining application for review within the meaning of section 126, until after that application has been determined.

Compare: 2000 No 42 s 117

*Legal aid for certain types of legal assistance in respect of Waitangi Tribunal proceedings under former Act*

**133 Legal aid for certain types of legal assistance in respect of Waitangi Tribunal proceedings**

- (1) This section applies to any application or grant of legal aid made before the commencement of this Act in respect of proceedings before the Waitangi Tribunal for the purposes of funding the provision of legal advice and representation to assist the applicant or group—
- (a) with resolving the dispute other than by legal proceedings;
  - (b) with taking steps preliminary or incidental to any proceeding;
  - (c) in arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings.
- (2) Until the close of the expiry day, every application or grant to which this section applies must be dealt with by the Commissioner as if the applicable provisions of the former Act and the Legal Services Regulations 2006 had not been repealed or revoked.
- (3) Despite section 132, the Commissioner must on the close of the expiry day cease funding any grant to which this section applies, or any grant arising out of an application to which this section applies.
- (4) To avoid doubt, the expiry of a grant of legal aid under this section—
- (a) is not a withdrawal of the grant under section 31; and
  - (b) does not affect—
    - (i) the aided person's obligations arising out of the conditions of the grant; or
    - (ii) the Commissioner's rights to enforce those obligations; or
    - (iii) the Commissioner's obligation to pay for the services provided under the grant before the expiry date.
- (5) In this section, **expiry day** means the day that is 6 months after the commencement of this Act.

*Community law centres*

**134 Community law centres**

Any funding arrangement in place on the day before the commencement of this Act between the Legal Services Agency and a community law centre continues, on and after the commencement of this Act, until the earlier of—

- (a) the date of commencement of a contract entered into under section 94(1); or
- (b) the date on which, in accordance with the terms of the arrangement, the funding arrangement ends.

*Listed providers under former Act*

**135 Listed providers under former Act**

- (1) A person who, immediately before the commencement of this Act, was a listed provider within the meaning of the former Act is, on the commencement of this Act, approved to provide the services that he or she was listed as approved to provide under the former Act for a period of 6 months after the commencement of this Act.
- (2) If the person makes an application within that 6-month period for approval to provide legal aid services or specified legal services, the approval conferred by subsection (1) continues until the Secretary decides the application.
- (3) An approval conferred by subsection (1) is subject to the provisions of this Act as if the approval had been granted under this Act.
- (4) If, immediately before the commencement of this Act, a listed provider's approval is cancelled or temporarily suspended under the former Act, sections 72A and 73 of the former Act continue, despite the repeal of the former Act, to apply to that approval.
- (5) A contract between a listed provider and the Legal Services Agency that is in force immediately before the commencement of this Act is deemed to be a contract between the provider and the Secretary.

**Subpart 3—Transition of matters commenced under Legal Services Act 1991**

*Legal aid granted and repayments made under Legal Services Act 1991*

**136 Legal aid granted under Legal Services Act 1991**

- (1) Legal aid granted under the Legal Services Act 1991 is not affected by the repeal of that Act; but, subject to section 137, after the commencement of this Act, this Act applies to that aid as if it had been granted under this Act.
- (2) On and after the commencement of this Act, an application that was properly made before that date under the Legal Services Act 1991, must, to the extent

that it was not dealt with before that date, be dealt with as if the application had been properly made under this Act.

Compare: 2000 No 42 s 117

**137 Repayments in respect of certain legal aid granted under Legal Services Act 1991**

- (1) This section applies if legal aid was granted under the Legal Services Act 1991 in respect of civil proceedings, but—
  - (a) the proceedings were not commenced; or
  - (b) the proceedings were commenced but not completed; or
  - (c) there are no proceeds of the proceedings; or
  - (d) the proceeds of the proceedings are not enough to cover the repayment payable (by virtue of section 18(2)) calculated under section 21.
- (2) The Commissioner may give the applicant concerned notice requiring the applicant to contribute a further amount if—
  - (a) this section applies; and
  - (b) a further contribution could have been required under the Legal Services Act 1991.
- (3) The further amount required to be contributed under subsection (2) must be no greater than the further contribution that could have been required under the Legal Services Act 1991.
- (4) This Act applies to a further amount required to be contributed under subsection (2) as if it were an interim repayment under this Act.
- (5) This section applies in respect of completed proceedings—
  - (a) whether they were completed before or after the commencement of this Act; and
  - (b) whether or not a repayment has previously been made or was required to be made (before or after the commencement of this Act) under the former Act.

Compare: 2000 No 42 s 117A

**Subpart 4—Amendments to other enactments**

*Lawyers and Conveyancers Act 2006*

**138 Amendments to Lawyers and Conveyancers Act 2006**

Sections 139 to 143 amend the Lawyers and Conveyancers Act 2006.

**139 Reference of complaint or matter to Disciplinary Tribunal**

Section 154 is amended by adding the following subsection as subsection (2):



- (2) If the person who is the subject of the complaint or matter is a provider under the Legal Services Act 2011, the Standards Committee must provide a written notice of the determination to the Secretary for Justice.

**140 Notice of determination**

Section 158 is amended by adding the following subsection:

- (3) If the person who is the subject of the determination is a provider under the Legal Services Act 2011, the Standards Committee must provide a written notice of the determination to the Secretary for Justice.

**141 Laying of charge with Disciplinary Tribunal**

Section 212 is amended by adding the following subsection:

- (5) If the Legal Complaints Review Officer decides to lay, or directs a Standards Committee to lay, a charge against a person who is a provider under the Legal Services Act 2011, the Legal Complaints Review Officer must give written notice of the decision to the Secretary for Justice.

**142 Obligation to report outcomes and recommendations**

Section 213 is amended by adding the following subsection:

- (3) If the person who is the subject of the review is a provider under the Legal Services Act 2011, the Legal Complaints Review Officer must report both the outcome of the review and any recommendations made as a result of the review to the Secretary for Justice.

**143 Order for striking off, cancellation of registration, restoration, or suspension to be filed in High Court**

Section 255 is amended by adding the following subsection:

- (5) If the person who is the subject of the order is a provider under the Legal Services Act 2011, the chairperson of the Disciplinary Tribunal must give a copy of the order to the Secretary for Justice.

*Consequential amendments to other enactments*

**144 Consequential amendments to other enactments**

The Acts listed in Schedule 4 are amended in the manner indicated in that schedule.

**Subpart 5—Repeal and revocation**

**145 Repeal of Legal Services Act 2000**

The Legal Services Act 2000 (2000 No 42) is repealed.

**146 Revocation of Legal Services Regulations 2006**

The Legal Services Regulations 2006 (SR 2006/180) are revoked.

## Schedule 1

### Definition of income and disposable capital

ss 4(1), 8(3)

#### 1 Definitions

In this schedule, unless the context otherwise requires,—

**capital**, in relation to an applicant for legal aid, means that person's total assets after deducting—

- (a) the amount of any debts secured against those assets; and
- (b) the amount of the actual debts of the person, other than those that are secured

**home** means the person's principal place of residence

**partner** means, in relation to a person, the person's civil union partner or de facto partner.

#### 2 Meaning of income

(1) In relation to an applicant for legal aid, **income**—

- (a) means the person's total gross income during the 12 months immediately before the application for legal aid, or during such other period of 12 months as the Commissioner considers appropriate in the circumstances; and
- (b) has the meaning given to it in paragraphs (a) to (e) of the definition of income in section 3(1) of the Social Security Act 1964; and
- (c) includes a benefit payable under any of Parts 1A to 1P of the Social Security Act 1964; but does not include—
  - (i) an orphan's benefit payable under section 28 of that Act; or
  - (ii) an unsupported child's benefit payable under section 29 of that Act; or
  - (iii) a child disability allowance payable under section 39A of that Act; or
  - (iv) an emergency benefit payable under section 61 of that Act; or
  - (v) an accommodation supplement payable under section 61EA of that Act; or
  - (va) a winter energy payment payable under Part 1KA of that Act; or
  - (vi) temporary additional support payable under section 61G of that Act; or
  - (vii) a disability allowance payable under section 69C of that Act; and
- (ca) excludes a special benefit continued under section 23 of the Social Security (Working for Families) Amendment Act 2004; and

- (d) excludes any payment payable under a welfare programme approved by the Minister under section 124(1)(d) of the Social Security Act 1964; but
  - (e) includes any tax credit or amount received under subparts MA to MF and MZ of the Income Tax Act 2007 or subpart KD of the Income Tax Act 2004 or subpart KD of the Income Tax Act 1994 or Part 11A of the Income Tax Act 1976.
- (2) Subclause (1) is subject to clauses 4 and 5.

Schedule 1 clause 2(1)(c): amended, on 15 July 2013, by section 138 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

Schedule 1 clause 2(1)(c)(va): inserted, on 1 July 2018, by section 68 of the Families Package (Income Tax and Benefits) Act 2017 (2017 No 51).

Schedule 1 clause 2(1)(c)(vi): replaced, on 1 July 2018, by section 68 of the Families Package (Income Tax and Benefits) Act 2017 (2017 No 51).

Schedule 1 clause 2(1)(ca): inserted, on 1 July 2018, by section 68 of the Families Package (Income Tax and Benefits) Act 2017 (2017 No 51).

### 3 Meaning of disposable capital

- (1) In relation to an applicant for legal aid, **disposable capital** means that person's total assets after deducting the amount of any debts secured against those assets and after deducting,—
- (a) if the person has an interest in a home, the amount of equity in the property set by regulations:
  - (b) if the person has an interest in a motor vehicle used principally as that person's means of transport for domestic purposes, the amount of the value of that interest:
  - (c) the amount of the value of the person's household furniture, household appliances, personal clothing, and tools of trade:
  - (d) the amount of the contingent liabilities of the person that may mature within the next 6 months:
  - (e) the amount of the actual debts of the person, other than those that are secured and have been taken into account in determining the amount of the person's assets:
  - (f) the value of the subject matter of the proceedings unless the Commissioner determines a proportion of that value that should be included in the assessment of the person's total assets:
  - (g) the value of any property that is the subject of a restraining order under the Criminal Proceeds (Recovery) Act 2009.
- (2) This clause is subject to clauses 4 and 5.

### 4 Resources of spouse or partner, or of parents of minor

- (1) Any resources of a person's spouse or partner must be treated as that person's resources unless—

- (a) the person is living apart from his or her spouse or partner; or
  - (b) the person and his or her spouse or partner have contrary interests in the matter to which the proceedings relate; or
  - (c) regulations provide otherwise.
- (2) Subject to subclauses (3) and (5), any resources of the parents of a minor who is under 16 years of age must be treated as that minor's resources, unless the minor and either of his or her parents have contrary interests in the matter to which the proceedings relate.
- (3) Where an application for legal aid for a civil matter is made by or on behalf of a person under 16 years of age, the Commissioner may exclude from the applicant's resources the resources of a parent of the applicant if—
- (a) that parent is living apart from, or does not have responsibility for the day-to-day care of, the applicant; or
  - (b) the applicant is supporting himself or herself without financial assistance from that parent.
- (4) Where an application for legal aid for a civil matter is made by a minor aged 16 years or over, the Commissioner may treat the resources of the following persons as resources of the applicant:
- (a) any person who, under any agreement or court order, is liable wholly or partially to maintain the applicant; or
  - (b) any parent, foster parent, or step-parent with whom the applicant is living.
- (5) Where an application for legal aid for a civil matter is made by a minor, the Commissioner may include in his or her resources any sum paid or payable, under any agreement or court order, to any person for the purpose of maintaining the minor.
- (6) Without limiting the ways in which persons may have a contrary interest in a matter, person A and person B have a **contrary interest** in a matter if—
- (a) person A applies for or is granted legal aid in connection with proceedings against person B under the Domestic Violence Act 1995; and
  - (b) either—
    - (i) person A is a minor and person B is person A's parent; or
    - (ii) person A is the spouse or partner of person B.

## 5 Resources relating to Māori land

- (1) In this clause, **applicant** means—
- (a) an applicant for legal aid for a civil matter; and
  - (b) every other person whose income or disposable capital has to be assessed for the purposes of deciding whether, and on what terms, legal aid should be granted under the application.

- (2) The income of the applicant includes any rent derived from Māori land or interests in Māori land.
- (3) The disposable capital of the applicant includes Māori land and any interests in Māori land unless—
  - (a) the application is made in respect of proceedings in the Waitangi Tribunal; or
  - (b) in the circumstances of the case, the Commissioner considers that it would be inequitable to include all or part of the land or interest.
- (4) For the purposes of this clause, **Māori land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993.
- (5) This clause operates despite anything in clauses 2, 3, and 4, or anything in regulations.

**6 Resources of representative, fiduciary, etc**

If an applicant for legal aid is concerned in the matter only in a representative, a fiduciary, or an official capacity,—

- (a) the applicant's personal resources must not be taken into account when assessing income or disposable capital; but
- (b) the Commissioner may have regard to the value of the property or estate, or the amount of the fund, out of which the applicant is entitled to be indemnified, and to the resources of the persons (if any) who are beneficially interested.

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## Schedule 2

### Specified enactments

ss 10(5), 11(4)

Adoption Act 1955

Adult Adoption Information Act 1985

Care of Children Act 2004

Child Support Act 1991

Domestic Violence Act 1995

Family Proceedings Act 1980 (other than Parts 6 to 8)

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

Mental Health (Compulsory Assessment and Treatment) Act 1992

Oranga Tamariki Act 1989 (other than Parts 4 and 5 and sections 351 to 360)

Protection of Personal and Property Rights Act 1988

Substance Addiction (Compulsory Assessment and Treatment) Act 2017

Schedule 2: amended, on 21 February 2018, by section 122(1) of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4).

Schedule 2: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

**Schedule 3**  
**Further provisions that apply to Legal Aid Tribunal, selection  
committees, performance review committee, and Review Authority**

ss 66, 67, 80, 87

**Part 1**  
**Further provisions that apply to Legal Aid Tribunal**

**1 Term of appointment and reappointment of members**

- (1) The term of office of a member of the Tribunal must not exceed 3 years.
- (2) A member of the Tribunal may be reappointed.

**2 Oath of office**

Before performing his or her functions as a member of the Tribunal, each member of the Tribunal must swear or affirm before a Judge of the High Court that the member will faithfully and impartially perform his or her duties as a member of the Tribunal.

**3 Continuation of term of office**

A member continues in office despite the expiry of his or her term of office until—

- (a) the member is reappointed; or
- (b) the member's successor is appointed; or
- (c) the Governor-General informs the member by written notice (with a copy to the chairperson) that the member is not to be reappointed and no successor is to be appointed at that time; or
- (d) the member vacates office under clause 7.

**4 Remuneration of members of Tribunal**

- (1) The members of the Tribunal are entitled—
  - (a) to receive remuneration not within paragraph (b) for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
  - (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
- (2) For the purposes of subclause (1), **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

**5 Tribunal serviced by Ministry of Justice**

The Tribunal is to be serviced by employees of the Ministry, and the Ministry must provide the resources and administrative support necessary to enable the Tribunal to perform its functions.

**6 Liability of Tribunal**

- (1) The Tribunal and members, officers, or agents of the Tribunal are not under any criminal or civil liability in respect of—
  - (a) any act done or omitted in the course of the performance or exercise, or intended performance or exercise, of any of its functions, duties, or powers under this Act; or
  - (b) any words spoken or written at, or in connection with, any review, determination, or direction to reconsider under this Act.
- (2) This clause does not exclude the liability of any person for anything done or omitted in bad faith.
- (3) In this clause, **officers** includes employees of the Ministry (other than the Commissioner) who provide services for the Tribunal under clause 5.

**7 Vacation of office**

- (1) A member of the Tribunal may at any time be removed from office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.
- (2) A member may at any time resign by written notice to the Minister.
- (3) A member ceases to hold office if he or she is adjudged bankrupt under the Insolvency Act 2006.

Compare: 2000 No 42 s 62(6), (7), (9); 2008 No 66 Schedule 1 cl 3(1)

**Part 2****Further provisions that apply to performance review committee or any selection committee****8 Interpretation**

In this Part, unless the context otherwise requires, **committee** means—

- (a) a selection committee established under section 78; or
- (b) a performance review committee established under section 79.

**9 Term of office and reappointment**

A member of a committee holds office for a term specified by the Secretary and may be reappointed.



## **10 Remuneration of members who are not Ministry employees**

- (1) The members of the committee who are not employees of the Ministry are entitled—
  - (a) to receive remuneration not within paragraph (b) for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
  - (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses in carrying out his or her office as a member.
- (2) For the purposes of subclause (1), **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

## **11 Independence of committees**

- (1) A committee must perform its functions independently of the Secretary.
- (2) The Secretary cannot direct a committee in relation to its functions.

## **12 Immunity of members**

Civil proceedings may not be brought against members of the committee in respect of things done and decisions made in good faith.

## **13 Immunity of people who supply information to committee**

Civil proceedings may not be brought against any person who supplies information to a committee on request and in good faith.

## **14 Members not in service of the Crown**

A person is not employed in the service of the Crown, for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956, merely as a result of being a member of a committee.

## **15 Vacation of office**

- (1) A member of a committee may at any time be removed from office by the Secretary for incapacity affecting performance of duty, neglect of duty, or misconduct proved to the satisfaction of the Secretary.
- (2) A member may at any time resign by written notice to the Secretary.
- (3) A member ceases to hold office if he or she is adjudged bankrupt under the Insolvency Act 2006.
- (4) If a member is an employee of the Ministry, his or her membership ceases when he or she ceases to be an employee of the Ministry.

## **16 Procedure of committee**

A committee must conduct its procedures in the manner set out in regulations.

**17 Administrative support**

The Ministry must provide the administrative support necessary to enable a committee to perform its functions.

**Part 3****Further provisions that apply to the Review Authority****18 Term of office and reappointment**

- (1) The term of office of the Review Authority must not exceed 3 years.
- (2) The Review Authority may be reappointed.

**19 Independence of Review Authority**

- (1) The Review Authority must perform his or her functions independently of the Minister.
- (2) The Minister cannot direct the Review Authority in relation to his or her functions.

**20 Review conducted on papers**

The Review Authority must conduct a review on the papers, with all reasonable speed.

**21 Remuneration of Review Authority**

- (1) The Review Authority is entitled—
  - (a) to receive remuneration not within paragraph (b) for services at a rate and of a kind determined by the Minister in accordance with the fees framework; and
  - (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses in carrying out his or her office.
- (2) For the purposes of subclause (1), **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

**22 Immunity of Review Authority**

Civil proceedings may not be brought against the Review Authority in respect of things done and decisions made in good faith.

**23 Immunity of people who supply information to Review Authority**

Civil proceedings may not be brought against any person who supplies information to the Review Authority on request and in good faith.

**24 Vacation of office**

- (1) The Review Authority may at any time be removed from office by the Minister for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- (2) The Review Authority may at any time resign by written notice to the Minister.
- (3) The Review Authority ceases to hold office if he or she is adjudged bankrupt under the Insolvency Act 2006.

Schedule 3 clause 24: replaced, on 2 September 2013, by section 26 of the Legal Services Amendment Act 2013 (2013 No 43).

**25 Procedure**

The procedures of the Review Authority must be conducted in the manner set out in regulations.

**26 Administrative support**

The Ministry must provide the administrative support necessary to enable the Review Authority to perform its functions.

## Schedule 4

### Consequential amendments

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#### **Criminal Investigations (Bodily Samples) Act 1995 (1995 No 55)**

Section 67(3): repeal.

#### **Crimes Act 1961 (1961 No 43)**

Section 392(1B)(c): repeal and substitute:

- (c) the Legal Services Commissioner, on request by the Commissioner.

#### **Criminal Proceeds (Recovery) Act 2009 (2009 No 8)**

Section 82(1)(b): omit “Legal Services Agency” and substitute “Secretary for Justice”.

Section 83(1)(b): omit “Legal Services Agency” and substitute “Secretary for Justice”.

Section 85(b): omit “Legal Services Agency” and substitute “Secretary for Justice”.

#### **Crown Entities Act 2004 (2004 No 115)**

Item relating to Legal Services Agency in Part 1 of Schedule 1: omit.

#### **Juries Act 1981 (1981 No 23)**

Section 8(haa): repeal.

#### **Lawyers and Conveyancers Act 2006 (2006 No 1)**

Definition of **community law centre** in section 6: repeal and substitute:

**community law centre** means a community law centre within the meaning of section 93 of the Legal Services Act 2011 that is providing community legal services under a contract entered into by the Secretary for Justice pursuant to section 94 of that Act

Section 9(1)(e): omit “Legal Services Agency” and substitute “Ministry of Justice”.

Section 31(4): omit “Legal Services Agency” and substitute “Secretary for Justice”.

Section 298(1): omit “Legal Services Agency” and substitute “Secretary for Justice”.

Section 307(4)(a), (b), and (c): repeal and substitute:

- (a) in the course of his or her employment by a community law centre, provides to the public—
  - (i) community legal services within the meaning of section 4(1) of the Legal Services Act 2011; or
  - (ii) legal services within the meaning of section 4(1) of the Legal Services Act 2011; or

**Lawyers and Conveyancers Act 2006 (2006 No 1)**—*continued*

- (b) acts as an employee of the Ministry of Justice; or
- (c) provides to the public legal services within the meaning of the Legal Services Act 2011; or

**Ombudsmen Act 1975 (1975 No 9)**

Item relating to the Legal Services Agency in Part 2 of Schedule 1: omit.

**Prisoners' and Victims' Claims Act 2005 (2005 No 74)**

Section 18(1)(a)(i): omit “Legal Services Agency” and substitute “Secretary for Justice”.

Section 18(1)(a)(iii): omit “section 32 of the Legal Services Act 2000” and substitute “section 36 of the Legal Services Act 2011”.

**Privacy Act 1993 (1993 No 28)**

Schedule 5: under the heading **Ministry of Justice Records**: omit “Legal Services Agency” in each place where it appears and substitute in each case “Legal Services Commissioner”.

Schedule 5: under the heading **Police records**: omit “Legal Services Agency” and substitute “Legal Services Commissioner”.

Schedule 5: under the heading **Registrar of Motor Vehicles records**: omit “Legal Services Agency” and substitute “Legal Services Commissioner”.

**Te Ture Whenua Maori Act 1993 (1993 No 4)**

Section 98(4): omit “Legal Services Agency” and substitute “Legal Services Commissioner”.

## Legal Services Amendment Act 2013

Public Act	2013 No 43
Date of assent	2 September 2013
Commencement	see section 2

### 1 Title

This Act is the Legal Services Amendment Act 2013.

### 2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions.
- (2) If any provision of this Act has not earlier been brought into force under subsection (1), it comes into force on the day that is 1 year after the date on which this Act receives the Royal assent.

Section 2(1): this Act brought into force, on 2 September 2013, by clause 2 of the Legal Services Amendment Act 2013 Commencement Order 2013 (SR 2013/308).

### 27 Transitional provision

- (1) In this section, **amendment** includes a textual change to a provision, the substitution or insertion of a new provision, or the repeal of a provision.
- (2) An application for legal aid received by the Commissioner before an amendment to the principal Act by this Act comes into force must be considered and determined as if the amendment had not been made.
- (3) An amendment to the principal Act by this Act does not affect the administration of a grant of legal aid made before the amendment comes into force and the grant must be administered as if the amendment had not been made.
- (4) Despite subsection (3), section 10(3A) of the principal Act as inserted by section 6(2) of this Act also applies to any amount payable by an applicant in respect of a grant made before the commencement of section 6(2).
- (5) Until the commencement of section 41 of the Legislation Act 2012, section 16A(8) of the principal Act, as inserted by section 8 of this Act, must be read as if it declared that a notice under section 16A(7) of the principal Act is subject to the Regulations (Disallowance) Act 1989, but not to the Acts and Regulations Publication Act 1989.
- (6) Despite subsection (3), the amendment made by section 13, so far as applicable, applies to grants of legal aid made before the commencement of that section.

**28 Liability for fee and expenses incurred in lodging prior caveats**

- (1) This section applies where, in connection with a grant of legal aid made before the commencement of this section, a caveat (a **prior caveat**) has, pursuant to section 15(4) of the Legal Services Act 2000 or section 18(4) of the principal Act, been lodged against dealings in any land or estate or interest owned by the aided person.
- (2) The Commissioner may recover the fee for, and any expenses reasonably incurred in, lodging a prior caveat from the aided person as a debt due to the Commissioner, to the extent that the Commissioner or the Legal Services Agency has not previously been reimbursed for the fee and the expenses.
- (3) No payment made to the Commissioner or the Legal Services Agency in reimbursement of the fee for, and any expenses reasonably incurred in, lodging a prior caveat may be recovered or claimed by way of set-off.

## Reprints notes

### 1 *General*

This is a reprint of the Legal Services Act 2011 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Families Package (Income Tax and Benefits) Act 2017 (2017 No 51): section 68

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Land Transfer Act 2017 (2017 No 30): section 250

Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4): section 122(1)

District Court Act 2016 (2016 No 49): section 261

Public Safety (Public Protection Orders) Act 2014 (2014 No 68): section 142

Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act 2013 (2013 No 97): section 25

Legal Services Amendment Act (No 2) 2013 (2013 No 81)

Legal Services Amendment Act 2013 (2013 No 43)

Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13): section 138

Criminal Procedure Act 2011 (2011 No 81): section 413

Summary Proceedings Amendment Act 2011 (2011 No 32): section 26

Legal Services Act 2011 Commencement Order 2011 (SR 2011/143)