

Legal Assistance (Sustainability) Amendment Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Legal Assistance (Sustainability) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Legal Assistance (Sustainability) Amendment Bill is an omnibus bill. It seeks to amend a number of statutes providing for Crown criminal and civil legal services, including legal aid, lawyer for child, and youth advocate services, to ensure that these services remain affordable to provide and available to those who need them.

Part 1 of the bill seeks to amend the Legal Services Act 2011 and Part 2 seeks to amend other Acts that allow a court-appointed lawyer to represent children. The proposed amendments would limit eligibility for legal aid and the number of legal aid grants, increase the amount that people receiving legal aid must pay, reintroduce a user charge for

civil and family legal aid, and allow interest to be charged on legal aid debts.

On 27 February 2012, the Minister of Justice wrote to request that we defer further consideration of the bill until the Family Court Review had reported to Cabinet in May 2012, to allow legal aid reforms to be consistent with any resulting decisions about the Family Court. On 10 October 2012, the Minister of Justice referred to us supplementary order paper 134, with a request that we consider the proposed amendments alongside the bill.

The supplementary order paper addressed many matters raised in submissions, with proposals including retaining the existing appointment frameworks for lawyers for the child and youth advocates, removing the proposal to use Orders in Council to change proceedings for which civil legal aid is available, removing the tighter financial means test for less serious criminal cases, and removing household goods from the calculation of eligibility for legal aid. The Minister also indicated changes to be introduced in regulations, including reducing the proposed user charge for family and civil cases from \$100 to \$50, and charging interest 6 months after a legal aid debt is finalised rather than immediately. The supplementary order paper also introduced several new provisions, including the ability to refuse to grant civil or family legal aid and the ability automatically to deduct repayments from wages and benefits if the applicant is in arrears for repayments on previous legal aid debt.

We invited further submissions on the proposed amendments set out in the supplementary order paper from all previous submitters on the bill.

Our commentary covers the major amendments we recommend to the bill. Minor and technical amendments are not discussed.

Title of bill

We recommend changing the name of the bill to the Legal Assistance Amendment Bill.

As introduced, the bill is named the Legal Assistance (Sustainability) Amendment Bill. The intention of this change is to reflect extensive amendments proposed to the bill in response to submissions. These proposed amendments reflect the refocusing of the bill on the out-

comes for legal aid clients, rather than solely on the financial savings to be achieved.

Tighter financial means test for criminal matters

We recommend removing the tighter financial means test for less serious criminal cases (those resulting in sentences of 3 years or less) and retaining the status quo.

As introduced, clause 6 of the bill, inserting new sections 8 and 8A into the principal Act, would change the financial means test for offences punishable by a prison sentence of 3 years or less. For such offences, the Legal Services Commissioner would be required to refuse to grant legal aid if the applicant's income or disposable capital exceeded thresholds prescribed in regulations, unless satisfied that special circumstances justified granting legal aid. We consider that this change would restrict access to justice too severely and could breach a person's right to a fair trial, also potentially increasing the number of self-represented litigants. Therefore, we recommend removing clause 6 and retaining the existing means test for criminal legal aid.

Schedule of proceedings eligible for civil legal aid

We recommend removing the provisions placing eligible civil proceedings in a schedule to the Legal Services Act, which could be amended through Order in Council.

As introduced, clause 6 of the bill inserts sections 7, 8, and 8A into the principal Act. New section 7 provides that civil legal aid is only available for matters prescribed in proposed new Schedule 1A. Clause 9 of the bill as introduced, inserting new section 13A, contains a Henry VIII regulation-making power, providing that the list of proceedings eligible for civil legal aid outlined in new Schedule 1A could be amended by Order in Council, on the recommendation of the Minister. The Regulations Review Committee has recommended that, unless there are exceptional circumstances for not doing so, the Henry VIII power in clause 9 be removed or that further controls be added, such as requiring all regulations amending this schedule in the principal Act made under this provision be confirmed by Parliament. We are not convinced that circumstances justify the bill overriding the important constitutional principle of non-delegation of legislative power, and recommend removing these provisions. It is important

that Parliament, not the government of the day, determine the proceedings to be funded by legal aid.

Additional eligibility criteria for civil legal aid

We recommend allowing the Commissioner to refuse civil legal aid if the applicant is in arrears for repayments on previous legal aid grants. However, we recommend controlling this discretion by reference to an interests-of-justice test.

Our proposed clause 7(2), amending section 10 to include new subsection 3A, would further amend the eligibility criteria for civil legal aid. The purpose of this amendment is to encourage legally aided people to recommence repayments. Once they began making repayments, they would become eligible for legal aid again. This provision would be unlikely to reduce significantly the number of people receiving legal aid, and would apply as an additional consideration to be balanced against the other factors the principal Act requires the Commissioner to consider. We considered carefully the likely effects of this provision on vulnerable people, and were reassured that domestic violence, mental health, refugee, and protection cases would be exempt from this provision.

User charge for family and civil legal aid

We recommend exempting proceedings under the Protection of Personal and Property Rights Act 1988 from the proposed user charge. The Protection of Personal and Property Rights Act is part of the definition of “specified application” set out in new clause 4. We consider that applications under this Act should be treated in the same way as other care-and-protection proceedings, such as those under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Therefore, we recommend that proceedings under this Act be exempt from the proposed user charge in clause 10.

As introduced, clause 10 inserting new section 18A into the bill seeks to introduce a user charge for family and civil legal aid, although specified recipients would be exempt. The amount of the charge would be set by regulations. We are aware of a widely-held view that introducing a user charge would discourage people from accessing legal aid, reducing access to justice and increasing the number of self-represented litigants. However, we note that the intention

of the user charge is to encourage applicants to consider carefully whether they will pursue a case, similar to the “reasonable litigant” test that privately funded litigants consider. Determining a level for the user charge is outside the scope of this bill. However, we note that the Government has agreed to reduce the level of the proposed user charge from \$100 to \$50 (GST inclusive).

After carefully considering the implications of a user charge, we consider that the proposed \$50 user charge would neither significantly discourage people from accessing legal aid nor increase administrative costs. However, we think that applications under the Protection of Personal and Property Rights Act should be exempt from the user charge, as this legislation is part of the Family Court’s protective jurisdiction and concerns vulnerable people.

We also recommend further consequential amendments to exempt proceedings under this Act: specifically, that proceedings be exempt from the higher threshold set by new clause 7(1), inserting new section 10(2); and from the new discretion set out in new clause 7(2) to refuse grants to applicants who are in arrears, inserting new section 10(3A).

Charging interest on unpaid legal aid debt

Most of us recommend amending clause 12, replacing section 40 of the Act, so that interest may be charged on all unpaid final legal aid debt.

Clause 12 of the bill as introduced would require a person receiving legal aid to pay interest on outstanding legal aid debt, at a rate set by regulations. As introduced, the wording in clause 12 would require interest to be paid on any amount that was payable. “Amount payable” is defined in section 33 of the principal Act, but this definition does not capture all final debt. Most of us recommend amending clause 12 to reflect more accurately the Government’s policy decision to allow interest to be charged on all unpaid final debt.

The intentions behind charging interest are to incentivise prompt repayment, increase Crown income to help offset legal aid costs, and reduce expenditure relating to debt held by the Crown for long periods. We considered these benefits alongside other issues, such as whether this proposed amendment would create additional financial hardship for those least able to meet costs and potentially increase

the number of self-represented litigants, and whether it would be likely to cause legally aided people to stop making debt repayments altogether. However, most of us do not consider these adverse effects to be likely outcomes of the proposed amendment. Most of us are persuaded that most people will continue to repay their legal aid debt regardless of interest being charged.

Commissioner to issue deduction notices

We recommend enabling the Commissioner to issue deduction notices to recover legal aid debts.

Our proposed clause 12A would introduce new sections 41A–J to the Act to provide for deduction notices. A deduction notice would be a written notice requiring a third party to deduct legal aid repayments automatically from a person's wages or benefit, as a last-resort action to recover debt. Although it is unknown whether applications for costs by defendants would increase as a result of this proposed amendment, we understand that such applications are rare so it is unlikely that any change would affect court resources. Our proposed change would simplify the existing administrative process. The Commissioner's new powers would be similar to those of the Commissioner of Inland Revenue and the Chief Executive of the Ministry of Social Development.

Grounds on which legal aid must be declined

We recommend clarifying the grounds on which the Commissioner must decline payment to a legal aid provider for legal aid.

Clause 17 of the bill as introduced would amend the grounds on which the Commissioner may approve, defer, or decline a claim, prescribed by section 99(4) of the principal Act. We consider that it is unclear whether section 99(4) would give the Commissioner discretion to approve or decline a claim, or whether it would simply set out the options of grounds for declining a claim. We do not think that discretion is warranted for claims to the extent that they exceed the maximum grant, excessive or inaccurate claims, or unapproved disbursements. Our proposed amendments would clarify these points.

Review rights for legal aid providers

We recommend amending the bill to give legal aid providers reconsideration, review, and appeal rights for decisions by the Commissioner to decline payment of invoices submitted outside the specified timeframe.

The principal Act grants these rights to legally aided people, but the bill as introduced would not extend them to legal aid providers. Under the Legal Services Act 2000, legal aid providers were also entitled to these rights. Under the principal Act, legal aid providers' only formal avenue for redress is judicial review, which concerns the process used by decision-makers rather than the merits of the decision itself. The Regulations Review Committee found that standing order 315(2) envisages a right of review on the merits of the decision, but the principal Act does not empower it. Therefore, we recommend inserting new clauses 13A and 13B into the bill to grant legal aid providers rights to appeal and to seek reconsideration or review of decisions to decline payment of late invoices.

Reimbursing Commissioner for costs of lodging a caveat

We recommend enabling the setting of regulations to require a person receiving legal aid to reimburse the Commissioner for costs incurred in lodging a caveat. We also recommend validating the existing understanding of the practice of lodging caveats under the principal Act.

The principal Act authorises caveats to be lodged on the titles to land of legally aided people, stopping dealings in that land for the time being. However, there is no express requirement for legally aided people to reimburse the Commissioner for the costs incurred in lodging the caveat. We understand that there has been a general understanding that the reference to fees and expenses relating to charges in section 114(1) of the principal Act and regulation 13 of the Legal Services Regulations 2011 also included caveats. The Minister's policy intention is to encourage the use of caveats in preference to charges, because caveats may financially benefit legally aided people; they are more flexible and do not require amendment if debt levels change. Our proposed amendment to clause 19 would introduce a regulation-making power to allow the Commissioner to require reimburse-

ment for the costs incurred in lodging such a caveat, to recognise the Minister's policy intention to encourage their use. Our proposed clause 23AA would validate the existing understanding of the use of caveats and thus provide a retrospective legal basis for recovering the costs of lodging a caveat from legally aided people.

Definition of “disposable capital”

We recommend removing the requirement to consider household furniture and other low-value assets when assessing disposable capital. As introduced, clause 20 of the bill would amend Schedule 1 of the principal Act to include the value of an applicant's household furniture, appliances, personal clothing, and tools of trade in calculating disposable capital to determine eligibility for legal aid. We consider that any items necessary to maintain the quality of someone's life or livelihood should not be counted as disposable capital. We also consider that assistive technology and related items used by people with disabilities should not be taken into account when determining eligibility for legal aid. Our proposed amendment would remove this provision from the bill.

Lawyer for the child and youth-advocate services

We recommend retaining the existing approval frameworks for court-appointed lawyers representing children or young people, or acting as youth advocates.

As introduced, the bill would require lawyers for the child and lawyers acting as youth advocates to be approved to provide these services under the principal Act, and would require amending a number of other Acts accordingly. Currently, youth advocates are approved under a dedicated Youth Court protocol and lawyers for the child are appointed under a dedicated Family Court Practice Note.

We consider that the existing approval frameworks for lawyers for the child and youth advocates are effective and ensure high-quality services are provided. We have not been persuaded of any need to change the existing system. In fact, we think that increasing the number of youth advocates could result in the benefits of specialisation being lost, and quality might decline accordingly. We also consider that it would be an unconstitutional restraint on the jurisdiction

of the Family Court for the Ministry of Justice to determine which lawyers the Family and Youth Courts may appoint. Our proposed amendments would address these concerns by removing a number of clauses from the bill as introduced.

Payment for lawyer for the child

We recommend exempting permanent foster parents from contributing to the cost of lawyer for the child when they apply for orders or defend an application under the Care of Children Act 2004.

As introduced, clauses 26, 27, 33, and 46 of the bill would require parties to pay a proportion of the fees of court-appointed lawyers for the child. The proportion would be set by regulations. The court would be able to decline to make an order if satisfied this would cause serious hardship to the party or the dependent child of the party. Almost all lawyer-for-the-child appointments to which these provisions would apply are made under the Care of Children Act. The main principle of this Act is to provide for the welfare and best interests of the child. As any decisions about payment must take this principle into account, we do not consider that the proposed measures would have a negative effect on children or discourage appointments of lawyer for the child. However, we do not consider that foster parents applying for, or defending an application for, parenting orders should have to contribute to the cost of lawyer for the child.

Definition of “dependent child”

We recommend amending the definition of dependent child to refer to a child whose care is substantially the responsibility of the party.

As introduced, the definition of dependent child (in clause 27 inserting new section 131A to the Care of Children Act, and in clause 46 inserting new section 162C to the Family Proceedings Act 1980) refers to a child “primarily” in the care of the party, and does not take into account proposed changes to the child support regime or shared-care arrangements. Our proposed amendments would address these concerns.

Labour and Green Party minority view

As introduced, this bill contains a series of drastic reductions to entitlements to State-provided legal assistance. Extremely low thresholds for eligibility for such assistance would have applied; the value of an applicant's clothing, household furniture and tools of trade would have had to be taken into account in deciding eligibility; specification of the types of legal proceeding for which assistance would be available would have been stripped out of the statute and determined instead by ministerial fiat; heavy restrictions would have come into effect on the availability of counsel for the child in Family Court cases—one of the most important protective features for vulnerable children in the current system; and the very valuable work performed by youth advocates in our court system would have been denied recognition. All this—as the original title of the bill indicates—was in pursuit of cost savings out of the legal aid scheme, with scant regard for the catastrophic effect on low-income New Zealanders' ability to access the justice system that these changes would have represented. Our deep concern about the effect of the bill on access to justice led us to oppose it strongly, at its first reading and since.

We welcome the fact that, consequent on a change in ministerial personnel, the Government has re-thought the amendment, and there is no doubt that an improved bill has emerged out of the resulting changes that have been signalled. The proposed cuts detailed above have in large part been abandoned. However, there are a number of key aspects of continuing concern in the bill, detailed below, which lead us to conclude that we cannot support it, even in its modified form.

First, the bill proposes that an application for legal assistance may be turned down if the applicant is in arrears in repaying any part of a previous grant of aid that he or she may have received. If legal assistance is to be largely made on the basis of a loan scheme, we can see the wisdom of a provision of this nature. The committee agreed to recommend amendments to the bill in order to require assistance to be granted where the interests of justice require it. We are concerned that this may not be a sufficient safeguard and would prefer that it require a grant of assistance to be made where a refusal would result in hardship. Especially, as here, where the very rationale for the bill is cost containment, we think that in cases where arrears have arisen through unforeseeable circumstances, or where turning down

an application would cause hardship, no discretion to turn down an application should exist. The Government's refusal to countenance sufficient limitations is a major factor in our continued opposition to the bill.

Secondly, the bill's original proposal for the re-introduction of a user charge for applications for legal assistance remains, although a figure of \$50 rather than \$100 is now mooted. We have spoken to many providers of legal aid who had experience of the reality of a legal aid user charge the last time a National-led government introduced one in the 1990s. We have been told that in many cases, legal aid providers simply paid the charge, since their clients could generally not afford to do so. The charge was then absorbed into the provider's baseline costs and in effect passed back to the Crown when services were invoiced. This may be more difficult to do under the fixed fee for service model now being implemented, but the end result is that the user charge will be paid for either by the Crown, or by other clients of service providers, or failing all of that by service providers themselves. At a time when more and more providers are exiting the business of providing legal aid, this seems like self-defeating and bad public policy.

Thirdly, we are concerned about the bill's provision that interest is to be charged on arrears of legal aid. Again, if legal assistance is to be largely made on the basis of a loan scheme, we can see the wisdom of a provision of this nature. There will be a general discretion to waive the requirement for repayment of arrears, and we are advised that this will extend to interest charges. However, we think that the discretion should be better controlled, again by requiring waiver in cases where hardship will otherwise result.

Fourthly, provisions which are intended to have retrospective effect are proposed to validate the recovery of the costs incurred by the administrators of the legal assistance scheme to caveat property to secure grants made wholly or partially as loans. As with the provision enabling the refusal of assistance where an applicant is in arrears, if legal assistance is to be largely made on the basis of a loan scheme, we can see the wisdom of a provision of this nature, provided the work is done cost-effectively. We are concerned that no incentive for this efficiency is created by the bill. We also oppose the retrospective validation provision. If cost recovery was not lawful at the time it

occurred, the Government should not be able to rely on any resulting revenue.

Taken together with existing reductions to the availability of legal assistance, proposed reductions in accessing the Family Court and related counselling services, and the delays that now exist in our court system (especially in Auckland) for the disposal of cases, we remain very concerned about the effect of even the modified reductions to entitlements that this bill will bring into effect. We support an efficient as well as an effective legal aid scheme. But there are better ways than continuing to chip away at the entitlements to assistance of the most vulnerable New Zealanders by which to achieve such a scheme.

Appendix

Committee process

The Legal Assistance (Sustainability) Bill was referred to the committee on 16 August 2011. The closing date for submissions was 30 September 2011. We received and considered 25 submissions from interested groups and individuals. We heard 15 submissions. The Minister of Justice referred to us supplementary order paper 134 on 10 October 2012. We considered the proposed amendments alongside the bill.

We received advice from the Ministry of Justice. The Regulations Review Committee advised us on the regulation-making powers in the bill, and reported to the committee on the powers contained in clause 9.

Committee membership

Tim Macindoe (Chairperson)

Dr Jackie Blue

Dr Cam Calder

Charles Chauvel

Hon Lianne Dalziel

Julie Anne Genter

Alfred Ngaro

Denis O'Rourke

Katrina Shanks

Legal Assistance (~~Sustainability~~)
Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

~~text deleted unanimously~~

Hon Judith Collins

Legal Assistance (~~Sustainability~~) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1	Title This Act is the Legal Assistance (Sustainability) Amendment Act 2011 .	
2	Commencement	5
(1)	This Act, except section 19(5) , 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)	Section 19(5) comes into force on the day after the date on which this Act receives the Royal assent.	10
(3)	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.	15

**Part 1
Amendments to Legal Services Act 2011**

3	Principal Act amended This Part amends the Legal Services Act 2011.	
4	Interpretation	20
(1)	The definition of civil proceedings in section 4(1) is repealed.	
(2)	The definition of prescribed repayment amount <u>in section 4(1)</u> is amended by omitting “sections 19(1) and 20” and substituting “sections 20(1) and 21”.	
(3)	Section 4(1) is amended by inserting the following definition <u>definitions</u> in its <u>their</u> appropriate alphabetical order:	25

“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 5

“(c) by a care recipient or proposed care recipient in respect of proceedings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or 10

“(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 15

“(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 20

“(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 25

“(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 30

“(g) in respect of a proceeding under Part 2 or 3A of the Children, Young Persons, and Their Families 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 35

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

5 Proceedings for which legal aid may be granted: criminal matters

Section 6 is amended by repealing paragraph (c) and substituting the following paragraphs:

- “(c) proceedings before the New Zealand Parole Board that— 5
- “(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 10
 - “(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).” 15

6 New sections 7, 8, and 8A substituted

Sections 7 and 8 are repealed and the following sections substituted: 20

~~“7~~ **Proceedings for which legal aid may be granted: civil matters**

- ~~“(1) Legal aid may be granted in respect of a civil matter only if—~~
- ~~“(a) the matter is specified in **Schedule 1A** as a matter for which legal aid is available; and 25~~
 - ~~“(b) any conditions stated in that schedule are met.~~
- ~~“(2) Legal aid is not available in respect of matters excluded by **Schedule 1A**.~~

~~“8~~ **When legal aid may be granted: criminal matters**

- ~~“(1) The Commissioner may grant legal aid, in respect of proceedings to which section 6 applies (criminal matters); if— 30~~
- ~~“(a) the applicant is a natural person charged with or convicted of an offence; and~~
 - ~~“(b) either—~~
 - ~~“(i) the offence to which the application relates is punishable by a maximum term of imprisonment of 6 months or more; or 35~~

- ~~“(ii) it appears to the Commissioner that the interests of justice require that the applicant be granted legal aid; and~~
- ~~“(c) the application for legal aid meets whichever of the requirements specified in **section 8A(1), (3), or (5)** is applicable.~~ 5
- ~~“(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~~ 10
- ~~“(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~~ 15
- ~~“(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~~ 20
- ~~“(vi) whether the applicant is able to understand the proceedings or present his or her own case, whether orally or in writing; and~~ 25
- ~~“(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~~ 30
- ~~“(b) may have regard to any other circumstances that, in the opinion of the Commissioner, are relevant.~~
- ~~“(3) **Subsection (1)(b)(i)** does not apply in respect of—~~
- ~~“(a) an appeal; or~~
- ~~“(b) a proceeding to which **section 6(c) or (d)** applies.~~ 35
- ~~“(4) Despite **subsection (1)**, 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 Children, Young Persons, and Their Families Act 1989) in respect of any proceedings against that~~

child or young person for an offence if those proceedings are heard in a Youth Court.

~~8A~~ Means of applicant for legal aid in criminal matters

- ~~“(1) An application for legal aid that relates to proceedings for an offence punishable by a maximum term of imprisonment of more than 3 years meets the requirements of this subsection if the Commissioner is of the view that the applicant does not have sufficient means to enable him or her to obtain legal assistance.”~~ 5
- ~~“(2) 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.”~~ 10
- ~~“(3) An application for legal aid that relates to proceedings that relate solely to offences punishable by a maximum term of imprisonment of 3 years or less meets the requirements of this subsection if neither the applicant’s income nor the applicant’s disposable capital exceeds the relevant thresholds prescribed in regulations.”~~ 15 20
- ~~“(4) The Commissioner must decline an application of the kind described in **subsection (3)** if the applicant’s income or the applicant’s disposable capital exceeds the relevant thresholds prescribed in regulations.”~~
- ~~“(5) However, despite **subsection (4)**, an application of the kind described in **subsection (3)** meets the requirements of this subsection, and the applicant may accordingly be granted legal aid, if the Commissioner is satisfied that there are special circumstances, having regard to—~~ 25
- ~~“(a) the likely cost of the proceedings to the applicant; and~~ 30
- ~~“(b) the applicant’s ability to fund the proceedings if legal aid is not granted.”~~

7 When legal aid may be granted: civil matters

- ~~(1) Section 10 is amended by repealing subsection (2) and substituting the following subsections:~~ 35

- ~~“(2) The Commissioner must refuse to grant legal aid to an applicant whose income or disposable capital exceeds the relevant thresholds prescribed in regulations, unless the Commissioner is satisfied that there are special circumstances, having regard to,—~~ 5
- ~~“(a) in the case of a care and protection application, a domestic violence application, or an asylum proceeding, either or both of the matters set out in **subsection (2A)**;~~
- ~~“(b) in any other case, both of the matters set out in **subsection (2A)**;~~ 10
- ~~“(2A) The matters referred to in **subsection (2)** are:~~
- ~~“(a) the likely cost of the proceedings to the applicant;~~
- ~~“(b) the applicant’s ability to fund the proceedings if legal aid is not granted.”~~
- (2) Section 10(6)(e) is repealed. 15
- (3) Section 10 is amended by adding the following subsection:
- ~~“(7) In this section,—~~
- ~~“asylum proceeding means a proceeding that involves, or is connected with, the recognition of a person as a refugee or protected person, being a proceeding that is specified in **Schedule 1A** as a matter available for legal aid~~
- ~~“care and protection application means an application in respect of a proceeding under any of the following Acts:~~
- ~~“(a) Part 2 or 3A of the Children, Young Persons, and Their Families Act 1989; 25~~
- ~~“(b) the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003;~~
- ~~“(c) the Mental Health (Compulsory Assessment and Treatment) Act 1992~~
- ~~“domestic violence application means an application made by or on behalf of person A, as described in section 19(1), in respect of a protection order under Part 2, or an order relating to property under Part 3, of the Domestic Violence Act 1995.”~~ 30
- 8 Other situations where legal aid refused or limited: civil matters** 35
- Section 12(2) is amended by repealing paragraph (b) and substituting the following paragraph:

~~“(b) proceedings that involve, or are connected with, the recognition of a person as a refugee or protected person, being an application that is specified in **Schedule 4A** as a matter available for legal aid.”~~

9 New section 13A inserted 5

The following section is inserted after section 13:

~~“**13A Schedules 1A and 2 may be amended by Order in Council**~~

~~“(1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, amend **Schedule 4A** or 2.”~~ 10

~~“(2) If a recommendation under **subsection (1)** would have the effect of excluding or restricting the grant of legal aid for any civil matter, the Minister must be satisfied that the proposed exclusion or restriction is desirable in the interests of either or both of the following:~~ 15

~~“(a) the future viability of the legal aid scheme;~~

~~“(b) the fairness of the legal aid scheme to applicants for legal aid and to the wider community.”~~

~~“(3) Before the Minister makes a recommendation under **subsection (1)**, the Minister must consult with representatives of groups who, in the opinion of the Minister, are likely to be affected by the recommendation.”~~ 20

7 When legal aid may be granted: civil matters

(1) Section 10 is amended by repealing subsection (2) and substituting the following subsections: 25

“(2) The Commissioner must refuse to grant legal aid to an applicant whose income or disposable capital exceeds the relevant thresholds prescribed in regulations, unless the Commissioner is satisfied that there are special circumstances, having regard to— 30

“(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 35

purposes of **subsection (2)**, if the Commissioner has regard to either **paragraph (a) or (b)** of that subsection.”

(2) Section 10 is amended by inserting the following subsection after subsection (3):

“(3A) The Commissioner may, unless the interests of justice require otherwise, refuse to grant legal aid to an applicant if— 5

“(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).” 10

(3) Section 10(6)(c) is repealed.

9A Conditions on grant of legal aid

Section 18 is amended by repealing subsection (7) and substituting the following subsection: 15

“(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 20

“(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 25

“(d) 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.”

10 New section 18A inserted 30

The following section is inserted after section 18:

“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. 35

- “(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— 5
- “(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 10 from the aided person.
- ~~“(4) This section does not apply to a grant of legal aid made on an application—~~
- ~~“(a) described in any of section 18(7)(a) to (d); or~~
- ~~“(b) that relates to a proceeding under— 15~~
- ~~“(i) Part 2 or 3A of the Children, Young Persons, and Their Families Act 1989; or~~
- ~~“(ii) the Prisoners’ and Victims’ Claims Act 2005; or~~
- ~~“(c) made by or on behalf of person A, as described in section 19(1), in respect of a protection order under Part 2, 20 or an order relating to property under Part 3, of the Domestic Violence Act 1995; or~~
- ~~“(d) that relates to a proceeding that involves, or is connected with, the recognition of a person as a refugee or protected person, being a proceeding that is specified in 25~~
- ~~**Schedule 4A** as a matter available for legal aid.~~
- “(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 30
- 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 35 on an application for matters referred to in that subsection as well as for other matters.”

11 Amount payable by aided person to Commissioner

- (1) Section 33 is amended by omitting “under the conditions” and substituting “in respect”.
- (2) Section 33 is amended by adding “; and” and also by adding the following ~~paragraph~~ paragraphs: 5
- “(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.” 10

11A Amounts payable under conditions of grant are debts due to Commissioner

- (1) The heading to section 34 is amended by omitting “**under conditions**” and substituting “**in respect**”. 15
- (2) Section 34 is amended by repealing subsections (1) and (2) and substituting the following subsection:
- “(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.” 20

12 New section 40 substituted

- Section 40 is repealed and the following section substituted: 25
- “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 12** of the Legal Services Amendment Act **2011**). 30
- “(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 ~~amount~~ debt that is owed, during any period specified in the regulations, ~~is payable under section 33(b)~~ by the aided person to the Commissioner in respect of a grant of legal aid. 35

- ~~“(3) **Subsection (4)** applies to so much of an amount (the **outstanding amount**) as is payable by an aided person in respect of a grant of legal aid made before the commencement of this section (as substituted by the Legal Services Amendment Act **2011**).~~ 5
- ~~“(4) The Commissioner may, by written notice, ask the aided person to pay interest in respect of the outstanding amount (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 outstanding amount.~~ 10
- “(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 **2012**.
- “(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. 15
- ~~“(5) Interest is not payable on any amount that an aided person is required to pay to the Commissioner under section 33(a).~~ 20
- “(5) Despite **subsection (2)**, interest is not payable—
- “(a) on any interim repayment; or
- “(b) unless the regulations otherwise provide, on any interest. 25
- ~~“(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 12** of the Legal Services Amendment Act **2011**).~~ 30

12A New headings and sections 41A to 41J inserted

The following headings and sections are inserted after section 41:

“Deduction notices

“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 5

“(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 10

“(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— 15

“(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 20

“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: 25

“(c) a benefit:

“(d) weekly compensation under the Accident Compensation Act 2001:

“(e) a bonus or an incentive payment:

“(f) commission: 30

“(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)** 35

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

“Compare: 1957 No 87 ss 2(1), 79

“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.** 5
- “(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—** 10
- “(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—** 15
- “(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.** 20
- “(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.** 25
- “(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.** 30
- “(7) Every deduction notice is subject to **sections 41C to 41J.****
- “Compare: 1964 No 136 s 86A

“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 35

department in respect of any salary or wages payable to the aided person.

“Compare: 1964 No 136 s 86B

“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. 5

“Compare: 1964 No 136 s 86C

“41E Deduction notices issued to banks 10

“(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. 15

“(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). 20 25

“(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— 30

“(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. 35

- “(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. 5

“Compare: 1964 No 136 s 86D

“41F Making of deductions 10

- “(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 15
“(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. 20

- “(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. 25

“Compare: 1964 No 136 s 86E

“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— 30
“(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 35
“(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. 5

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

“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. 10 15

“(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. 20

“(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— 25

“(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. 30

“Compare: 1964 No 136 s 86G

“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— 35

- “(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: 5
- “(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. 10
- “(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. 15
- “(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. 20
- “(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. 25
- “Compare: 1964 No 136 s 86I
- “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. 30
- “Compare: 1964 No 136 s 86J 35

“Decisions not to recover debt, write-offs, and
refunds”.

13 Commissioner to refund excess payments

Section 44 is amended by adding the following subsection as subsection (2):

5

- “(2) In assessing the cost of services for the purposes of subsection (1)(b), any interest paid under **section 40** must be disregarded.”

13A Reconsideration

- (1) Section 51 is amended by inserting the following subsection after subsection (1):

10

- “(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.”

15

- (2) Section 51(2) is amended by omitting “The application” and substituting “An application”.

13B Grounds for review

Section 52 is amended by inserting the following subsection after subsection (3):

20

- “(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.”

25

13C Approval

Section 77(2) is amended by omitting “any”.

14 Review Authority established

- (1) Section 84(2) is amended by adding “and may appoint 1 or more Deputy Review Authorities”.

30

- (2) Section 84(3) is amended by omitting “The person appointed as the Review Authority” and substituting “A person appointed under this section”.

15 New sections 87A and 87B inserted

The following sections are inserted after section 87:

“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. 5

“(2) This section is subject to **section 87B**.

“87B Scope of functions of Deputy Review Authority

10

“(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— 15

“(i) delay; or

“(ii) the perception of, or any actual, conflict of interest or other impropriety. 20

“(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. 25

“(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 30

“(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 35

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

“(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.” 10

16 Lead provider to claim for payment

Section 97(2)(a) is amended by inserting “, less the user charge required to be paid by the aided person” after “provider”. 15

17 Secretary to refer claim to Commissioner for decision

Section 99(4) is amended by inserting the following paragraph after paragraph (c):

“(ca) the user charge required to be paid by the aided person has not been deducted from the claim.” 20

17 Secretary to refer claim to Commissioner for decision

Section 99 is amended by repealing subsection (4) and substituting the following subsections:

“(4) The Commissioner must decline— 25

“(a) any claim to the extent that it exceeds the maximum grant specified in the grant; and

“(b) any claim to the extent to which it is for a disbursement of a type not approved for payment by the Commissioner; and 30

“(c) any claim or any part of a claim that has been determined to be excessive or inaccurate by an examination under subsection (2); and

- “(d) 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.” 5
- 18 Cancellation**
- (1) Section 103(1) is amended by repealing paragraph (c) and substituting the following paragraph:
- “(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:” 10
- (2) Section 103(4)(a) is amended by inserting “or will be deemed to have received it by virtue of section 115(2)” after “receive the notice”.
- (3) Section 103 is amended by adding the following subsection: 15
- “(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 20
- “(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.”
- 19 Regulations** 25
- (1) Section 114(1) is amended by inserting the following paragraph after paragraph (e):
- “(ea) prescribing the amount of the user charge, including different amounts for user charges relating to different classes of proceeding:” 30
- (1A) Section 114(1) is amended by inserting the following paragraph after paragraph (i):
- “(ia) specifying kinds of expenses or payments for the purposes of **section 33(1)(d)**.”
- (2) Section 114(1) is amended by repealing paragraph (k) and substituting the following paragraph: 35

- “(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.” 5
- (2A) Section 114(1)(o)(ii) is amended by inserting “or **18A**” after “section 18”.
- (3) Section 114(1) is amended by repealing paragraph (w) and substituting the following paragraph: 10
- “(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.” 15
- (4) Section 114(2) is amended by inserting “including the calculation of interest,” after “calculating amounts,”.
- (5) Section 114(5) to (7) are repealed.
- 19A Service of notices, etc**
- Section 115(1)(b) and (c) is amended by inserting “or business” after “of residence”. 20
- ~~**20 Schedule 1 amended**~~
~~Clause 3(1)(c) of Schedule 1 is repealed.~~
- ~~**21 New Schedule 1A inserted**~~
~~The **Schedule 1A** set out in the Schedule of this Act is inserted after Schedule 1.~~ 25
- 22 Schedule 3 amended**
Schedule 3 is amended by repealing clause 24 and substituting the following clause:
- “24 Vacation of office”** 30
- “(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.”

23 Transitional provision 5

(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. 10

(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. 15

(3A) Despite **subsection (3), section 10(3A)** of the principal Act as inserted by **section 7(2)** of this Act also applies to any amount payable by an applicant in respect of a grant made before the commencement of **section 7(2)**. 20

(4) Despite **subsection (3)**, the amendment made by **section 12**, so far as applicable, applies to grants of legal aid made before the commencement of that section.

23AA Liability for fee and expenses incurred in lodging prior caveats 25

(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. 30

(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. 35

- (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.

Part 2

5

Amendments to other Acts

Subpart 1AA—Accident Compensation Act
2001

23A Principal Act amended

This **subpart** amends the Accident Compensation Act 2001. 10

23B Entitlements inalienable

Section 123(2)(j) is amended by adding “; or” and also by adding the following paragraph:

“(k) **section 41B** of the Legal Services Act 2011.”

Subpart 1—Care of Children Act 2004

15

24 **Principal Act amended**

This **subpart** amends the Care of Children Act 2004.

25 **Lawyer to act for child**

~~(1) Section 7(1) is amended by inserting “who is eligible for appointment” after “lawyer”.~~ 20

~~(2) Section 7 is amended by adding the following subsections:~~

~~“(5) For the purposes of subsection (1), a lawyer is eligible for appointment if the lawyer is approved under section 77(1) of the Legal Services Act 2011 (as applied by **subsection (6)**) to provide the service of acting for a child under this section:~~ 25

~~“(6) Sections 75 to 88, 91, 101 to 105, and 112 of the Legal Services Act 2011 apply, with all necessary modifications, to any lawyer who is, or is to be, appointed under subsection (1) as if references in any of those sections—~~

~~“(a) to a specified legal service included a reference to acting for a child under subsection (1); and~~ 30

~~“(b) to a provider included a reference to a lawyer acting for a child under subsection (1).”~~²²

26 Costs of court-appointed counsel

Section 131 is amended by repealing subsection (4) and substituting the following subsections: 5

“(4) Despite subsection (1), the court may, if it thinks it is appropriate, order a party to the proceedings to refund to the Crown an amount the court specifies in respect of any fees and expenses that relate to an appointment under section 130(1) and have been paid under that subsection. 10

“(5) Despite subsection (1), where in any proceedings, other than an application under section 105 or 111, a lawyer has been appointed under section 7(1) and the fees and expenses relating to that appointment have been paid under subsection (1), the court must make an order under **section 131A**, unless the court declines to do so in accordance with that section. 15

~~“(6) However, no order under **section 131A** may be made against the Crown, whether acting through the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989 or otherwise.” 20~~

“(6) However, no order under **section 131A** may be made against—

“(a) the Crown, whether acting through the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989 or otherwise; or 25

“(b) a person in whose custody the child concerned has been placed pursuant to an order made under the Children, Young Persons, and Their Families Act 1989.”

27 New sections 131A to 131C inserted 30

The following sections are inserted after section 131:

“**131A Order requiring refund of payments in respect of lawyer acting for child**

“(1) An order referred to in **section 131(5)** must order the parties to refund to the Crown the prescribed proportion of the amount 35

paid by the Crown, under section 131(1)(b), in respect of the appointment of a lawyer appointed under section 7(1).

“(2) Each party must pay an equal share of the prescribed proportion.

“(3) Despite **subsection (1)**, the court may decline to make an order against a party if satisfied that the order would cause serious hardship to the party or to a dependent child of the party. 5

“(4) Despite **subsection (2)**, if the court is satisfied that, in view of the circumstances of the case, including the conduct of any party, it would be inappropriate to require a party to pay the amount payable in accordance with that subsection, the court may substitute, for that party, a different amount not exceeding the prescribed proportion. 10

~~“(5) If the court substitutes another amount under **subsection (4)**, the court must give written reasons for doing so. 15~~

“(6) In this section,—

~~“dependent child, in relation to a party, means a child—~~

~~“(a) whose care is primarily the responsibility of the party, and 20~~

~~“(b) who is maintained as a member of that party’s family, and~~

~~“(c) who is financially dependent on that party~~

“dependent child, in relation to a party, means a child whose care is substantially the responsibility of the party 25

“prescribed proportion means the proportion that is prescribed by regulations made under section 147 for the purposes of this section

“serious hardship, in relation to a party or a dependent child of a party,— 30

“(a) includes significant financial difficulties that arise because of—

“(i) the party’s inability to meet minimum living expenses according to normal community standards; or 35

“(ii) the cost of medical treatment for an illness or injury of the party or a dependent child of the party; or

- “(iii) a serious illness suffered by the party or by a dependent child of the party; or
- “(iv) the cost of education for a dependent child of the party:
- “(b) does not include significant financial difficulties that arise because— 5
- “(i) the social activities and entertainment of the party or those of a dependent child of the party may be limited; or
- “(ii) the party is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards. 10
- “131B Enforcement of orders to refund fees and expenses of court-appointed lawyers**
- “(1) The amount that a party is ordered to refund under **section 131(4) or 131A** is a debt due to the Crown by that party and may be enforced in a District Court or the High Court, as the case may require, in the same manner as a judgment of that court. 15
- “(2) Despite section 113 or 123 of the District Courts Act 1947 or section 100A of the Judicature Act 1908, no court fee is payable by a person who seeks to enforce, on behalf of the Crown, an order referred to in **subsection (1)**, but the fee that would otherwise be payable— 20
- “(a) is to be added to the amount sought to be enforced ; and 25
- “(b) must be paid to the Registrar of the court out of any proceeds that result from the enforcement.
- “(3) For the purposes of section 14(1)(b) of the Crown Proceedings Act 1950, the Secretary for Justice may, on behalf of the Crown, enforce a debt under this section.** 30
- “131C Time for payment of orders to refund fees and expenses of court-appointed lawyers may be extended**
- “(1) If an amount that a party is ordered to refund under **section 131(4) or 131A** is outstanding, the Registrar may enter into an arrangement with the party to allow for either or both of the following: 35
- “(a) a greater time for payment:

“(b) payment to be made by instalments.

“(2) No arrangement under **subsection (1)** may permit an amount to remain unpaid for more than 5 years after the date on which the arrangement is entered into.

“(3) No action to enforce an amount that is the subject of an arrangement under this section may be taken as long as the arrangement continues in force and is duly observed. 5

“(4) If an amount may be paid by instalments and default is made in the payment of any instalment, proceedings may be taken against the person in default as if default had been made in the payment of all instalments then remaining unpaid.” 10

28 Regulations

Section 147(2) is amended by inserting the following paragraph after paragraph (c):

“(ca) prescribing, for the purposes of **section 131A**, the proportion of any amount paid by the Crown under section 131(1)(b):” 15

29 Transitional provisions relating to eligibility of lawyers to act for child

(1) ~~Section 7 of the principal Act, as amended by **section 25** of this Act, applies to proceedings commenced before or after the commencement of **section 25**:~~ 20

(2) ~~A lawyer who, immediately before the commencement of **section 25** was, in accordance with the practice of the Family Court, eligible for appointment under section 7(1) of the principal Act continues to be so eligible for a period of 6 months after that commencement, even though the lawyer has not been approved under section 77(1) of the Legal Services Act 2011:~~ 25

(3) ~~If a person to whom **subsection (2)** applies makes an application, within the 6-month period referred to in that subsection, for approval to provide the service of acting for a child under section 7 of the principal Act, the eligibility conferred by **subsection (2)** continues until the Secretary for Justice decides the application.~~ 30

- 30 Transitional provisions relating to reimbursement of costs of court-appointed counsel**
- (1) Section 131(4) of the principal Act, as in force before the commencement of **section 26** of this Act, continues to apply to proceedings commenced before the commencement of **section 26**. 5
- (2) This subsection applies to—
- (a) any order made under section 131(4) of the principal Act as in force before the commencement of **section 26** of this Act, but only if, before that commencement, no steps had been taken to enforce that order; and 10
- (b) any order made, after that commencement, under section 131(4) of the principal Act as continued by **subsection (1)**. 15
- (3) Despite **subsection (1)**, in relation to any orders to which **subsection (2)** applies, section 131(4) of the principal Act, as continued by **subsection (1)**, must be read as if for the words “, by order of a District Court or the High Court as the case may require, in the same manner as a judgment of that Court” there were substituted the words “in a District Court or the High Court, as the case may require, in the same manner as a judgment of that court”. 20
- (4) **Sections 131A and 131B(1)** of the principal Act, as inserted by **section 27** of this Act do not apply to proceedings commenced before the commencement of **section 27**. 25
- (5) **Sections 131B(2) and (3) and 131C**, as inserted by **section 27** of this Act, apply, with any necessary modifications, to any orders to which **subsection (2)** applies.

Subpart 2—Child Support Act 1991

- 31 Principal Act amended** 30
This **subpart** amends the Child Support Act 1991.
- 32 Appointment of barrister or solicitor to assist court or represent children**
- (1) ~~Section 226 is amended by repealing subsection (1) and substituting the following subsection:~~ 35

~~“(1) In any proceeding under this Act (not being criminal proceedings) a court may, if the court is satisfied that it is necessary or desirable to do so,=~~

~~“(a) appoint a barrister or solicitor to assist the court; or~~

~~“(b) appoint a barrister or solicitor who is eligible for ap- 5
pointment to represent any child who is the subject of
or who is otherwise a party to the proceeding.”~~

Section 226(6) is repealed.

33 New sections ~~226A~~ 226B to 226E inserted

The following sections are inserted after section 226: 10

~~226A Eligibility for appointment as lawyer to represent children~~

~~“(1) For the purposes of **section 226(1)(b)**, a barrister or solicitor is eligible for appointment if the barrister or solicitor is approved under section 77(1) of the Legal Services Act 2011 (as applied by **subsection (2)** of this section) to provide the service of representing a child under this section: 15~~

~~“(2) Sections 75 to 88, 91, 101 to 105, and 112 of the Legal Services Act 2011 apply, with all necessary modifications, to any lawyer who is, or is to be, appointed under **section 226(1)** of this Act as if references in any of those sections— 20~~

~~“(a) to a specified legal service included a reference to representing a child under **section 226(1)**; and~~

~~“(b) to a provider included a reference to a barrister or solicitor representing a child under **section 226(1)**: 25~~

~~226B Costs of Court-appointed barrister or solicitor~~

~~“(1) Despite section 226(3), where any fees and expenses have been paid under that subsection that relate to an appointment under **section 226(1)(a)** section 226(1)(a), the court may, if it thinks it is appropriate, order a party to the proceedings to refund to the Crown an amount the court specifies in respect of those fees and expenses. 30~~

~~“(2) Despite section 226(3), where any fees and expenses have been paid under that subsection that relate to an appointment under **section 226(1)(b)** section 226(1)(b), the court must 35~~

make an order under **section 226C**, unless the court declines to do so in accordance with that section.

- “(3) However, no order under **section 226C** may be made against the Crown, whether acting through the department for the time being responsible for the administration of this Act or otherwise. 5

“**226C Order requiring refund of payments in respect of barrister or solicitor representing child**

- “(1) An order referred to in **section 226B(2)** must order the parties to refund to the Crown the prescribed proportion of the amount paid by the Crown, under section 226(3), in respect of the appointment of the barrister or solicitor under ~~**section 226(1)(b)**~~ section 226(1)(b). 10

- “(2) Each party must pay an equal share of the prescribed proportion. 15

- “(3) Despite **subsection (1)**, the court may decline to make an order against a party if satisfied that the order would cause serious hardship to the party or to a dependent child of the party.

- “(4) Despite **subsection (2)**, if the court is satisfied that, in view of the circumstances of the case, including the conduct of any party, it would be inappropriate to require a party to pay the amount payable in accordance with that subsection, the court may substitute, for that party, a different amount not exceeding the prescribed proportion. 25

- ~~“(5) If the court substitutes another amount under **subsection (4)**, the court must give written reasons for doing so.~~

- “(6) In this section,—

~~“**dependent child**, in relation to a party, means a child—~~

~~“(a) whose care is primarily the responsibility of the party; 30
and~~

~~“(b) who is maintained as a member of that party’s family; and~~

~~“(c) who is financially dependent on that party~~

“**dependent child**, in relation to a party, means a child whose care is substantially the responsibility of the party 35

“**prescribed proportion** means the same proportion that is prescribed by regulations made under section 147 of the Care of Children Act 2004 for the purposes of **section 131A** of that Act

“**serious hardship**, in relation to a party or a dependent child of a party, has the same meaning as in section 135G(3). 5

“**226D Enforcement of orders to refund fees and expenses of court-appointed barristers or solicitors**

“(1) The amount that a party is ordered to refund under **section 226B(1)** or **226C** is a debt due to the Crown by that party and may be enforced in the same manner as a judgment given by the District Court in any civil proceeding. 10

“(2) Despite section 113 or 123 of the District Courts Act 1947 or section 100A of the Judicature Act 1908, no court fee is payable by a person who seeks to enforce, on behalf of the Crown, an order referred to in **subsection (1)**, but the fee that would otherwise be payable— 15

“(a) is to be added to the amount sought to be enforced; and

“(b) must be paid to the Registrar of the court out of any proceeds that result from the enforcement. 20

“(3) For the purposes of section 14(1)(b) of the Crown Proceedings Act 1950, the Secretary for Justice may, on behalf of the Crown, enforce a debt under this section.

“**226E Time for payment of orders to refund fees and expenses of court-appointed barristers or solicitors may be extended** 25

“(1) If an amount that a party is ordered to refund under **section 226B(1)** or **226C** is outstanding, the Registrar may enter into an arrangement with the party to allow for either or both of the following: 30

“(a) a greater time for payment:

“(b) payment to be made by instalments.

“(2) No arrangement under **subsection (1)** may permit an amount to remain unpaid for more than 5 years after the date on which the arrangement is entered into. 35

- “(3) No action to enforce an amount that is the subject of an arrangement under this section may be taken as long as the arrangement continues in force and is duly observed.
- “(4) If an amount may be paid by instalments and default is made in the payment of any instalment, proceedings may be taken against the person in default as if default had been made in the payment of all instalments then remaining unpaid.”
- 34 Costs**
Section 232 is amended by adding the following subsection as subsection (2):
- “(2) This section is subject to ~~sections 226A(1) and 226B section 226B.~~”
- 35 Transitional provisions relating to eligibility of lawyers to represent children**
- (1) ~~Section 226(1) of the principal Act, as substituted by section 32 of this Act, applies to proceedings commenced before or after the commencement of section 32:~~
- (2) ~~A barrister or solicitor who, immediately before the commencement of section 32 of this Act was, in accordance with the practice of the Family Court, eligible for appointment under section 226(1)(b) of the principal Act continues to be so eligible for a period of 6 months after that commencement, even though the lawyer has not been approved under section 77(1) of the Legal Services Act 2011.~~
- (3) ~~If a person to whom subsection (2) applies makes an application, within the 6-month period referred to in that subsection, for approval to provide the service of representing children under section 226(1)(b) of the principal Act, the eligibility conferred by subsection (2) continues until the Secretary for Justice decides the application.~~
- 36 Transitional provisions relating to reimbursement of costs of court-appointed counsel**
- (1) Section 226(6) of the principal Act, as in force before the commencement of **section 32** of this Act, continues to apply to

proceedings commenced before the commencement of **section 32**.

- (2) **Sections 226B to 226D(1)** of the principal Act, as inserted by **section 33** of this Act do not apply to proceedings commenced before the commencement of **section 33**. 5
- (3) **Sections 226D(2) and (3) and 226E** of the principal Act, as inserted by **section 33** of this Act, apply, with any necessary modifications, to proceedings commenced before the commencement of **section 33**.

~~Subpart 3—Children, Young Persons, and
Their Families Act 1989~~ 10

37 Principal Act amended

This **subpart** amends the ~~Children, Young Persons, and Their Families Act 1989~~.

38 Appointment of barrister or solicitor to represent child or young person 15

- (1) Section 159(1) is amended by inserting “who is eligible for appointment” after “appoint a barrister or solicitor”.
- (2) Section 159(2) is amended by omitting “appoints a barrister or solicitor” and substituting “appoints from the barristers and solicitors eligible for appointment appoint one”. 20
- (3) Section 159(3)(b) is amended by inserting “who is eligible for appointment” after “other barrister or solicitor”.
- (4) Section 159 is amended by adding the following subsections:
 - “(4) For the purposes of this section, a barrister or solicitor is eligible for appointment if the barrister or solicitor is approved under section 77(1) of the Legal Services Act 2011 (as applied by **subsection (5)**) to provide the service of representing a child or young person under this section. 25
 - “(5) Sections 75 to 88, 91, 101 to 105, and 112 of the Legal Services Act 2011 apply, with all necessary modifications, to any barrister or solicitor who is, or is to be, appointed under this section as if references in any of those sections— 30
 - “(a) to a specified legal service included a reference to representing a child or young person under this section, and 35

~~“(b) to a provider included a reference to a barrister or solicitor representing a child or young person under this section.”~~

39 Appointment of youth advocate to represent child or young person

(1) Section 323(1) is amended by inserting “who is eligible for appointment” after “appoint a barrister or solicitor”.

(2) Section 323(2) is amended by omitting “appoint a barrister or solicitor” and substituting “from the barristers and solicitors eligible for appointment appoint one”

(3) Section 323(3) is amended by inserting “, if he or she is eligible for appointment,” after “appoint that Youth Advocate”.

(4) Section 323 is amended by adding the following subsections:

~~“(4) For the purposes of this section, a barrister or solicitor is eligible for appointment if the barrister or solicitor is approved under section 77(1) of the Legal Services Act 2011 (as applied by **subsection (5)**) to provide the service of representing a child or young person under this section.~~

~~“(5) Sections 75 to 88, 91, 101 to 105, and 112 of the Legal Services Act 2011 apply, with all necessary modifications, to any barrister or solicitor who is, or is to be, appointed under this section as if references in any of those sections—~~

~~“(a) to a specified legal service included a reference to representing a child or young person under this section; and~~

~~“(b) to a provider included a reference to a barrister or solicitor representing a child or young person under this section.”~~

40 Transitional provisions relating to eligibility of barristers or solicitors to represent child or young person

(1) Section 159 of the principal Act, as amended by **section 38** of this Act, applies to proceedings commenced before or after the commencement of **section 38**.

(2) Section 323 of the principal Act, as amended by **section 39** of this Act, applies to proceedings commenced before or after the commencement of **section 39** of this Act.

- (3) A barrister or solicitor who, immediately before the commencement of **section 38** was, in accordance with the practice of the Family Court or the Youth Court, as the case requires, eligible for appointment under section 159 or 323 of the principal Act continues to be so eligible for a period of 6 months after that commencement, even though the barrister or solicitor has not been approved under section 77(1) of the Legal Services Act 2011. 5
- (4) If a person to whom **subsection (3)** applies makes an application, within the 6-month period referred to in that subsection, for approval to provide the service of representing children or young persons under section 159 or 323 of the principal Act, the eligibility conferred by **subsection (3)** continues until the Secretary for Justice decides the application. 10

~~Subpart 4—Domestic Violence Act 1995~~ 15

41 Principal Act amended

This **subpart** amends the Domestic Violence Act 1995.

42 Court may appoint lawyer

- (1) Section 81 is amended by inserting the following subsection after subsection (1): 20
- “(1A) A lawyer appointed, under subsection (1)(b), to represent a child must be eligible for appointment.”
- (2) Section 81 is amended by adding the following subsections:
- “(6) For the purposes of **subsection (1A)**, a lawyer is eligible for appointment if the lawyer is approved under section 77(1) of the Legal Services Act 2011 (as applied by **subsection (7)**) to provide the service of representing a child under this section. 25
- “(7) Sections 75 to 88, 91, 101 to 105, and 112 of the Legal Services Act 2011 apply, with all necessary modifications, to any lawyer who is, or is to be, appointed under this section as if references in any of those sections— 30
- “(a) to a specified legal service included a reference to representing a child under this section; and
- “(b) to a provider included a reference to a lawyer representing a child under this section.” 35

43 Transitional provisions relating to eligibility of lawyers to represent children

- (1) Section 81 of the principal Act, as amended by **section 42** of this Act, applies to proceedings commenced before or after the commencement of **section 42** of this Act. 5
- (2) A lawyer who, immediately before the commencement of **section 42** was, in accordance with the practice of the Family Court, eligible for appointment under section 81(1)(b) of the principal Act continues to be so eligible for a period of 6 months after that commencement, even though the lawyer has not been approved under section 77(1) of the Legal Services Act 2011. 10
- (3) If a person to whom **subsection (2)** applies makes an application, within the 6-month period referred to in that subsection, for approval to provide the service of representing children under section 81(1)(b) of the principal Act, the eligibility conferred by **subsection (2)** continues until the Secretary for Justice decides the application. 15

Subpart 5—Family Proceedings Act 1980

- 44 Principal Act amended** 20
This **subpart** amends the Family Proceedings Act 1980.

45 Appointment of barrister or solicitor to assist Court or represent children

- (1) Section 162 is amended by repealing subsection (1) and substituting the following subsection: 25
- “(1) In any proceeding under this Act (not being criminal proceedings) a Court may, if the Court is satisfied that it is necessary or desirable to do so,—
- “(a) appoint a barrister or solicitor to assist the Court; or 30
- “(b) appoint a barrister or solicitor who is eligible for appointment to represent any child who is the subject of or who is otherwise a party to the proceeding.”

Section 162(6) is repealed.

46 New sections ~~162A~~ 162B to 162E inserted

The following sections are inserted after section 162: 35

“162A Eligibility for appointment as barrister or solicitor to represent child

- “(1) For the purposes of **section 162(1)(b)**, a barrister or solicitor is eligible for appointment if the barrister or solicitor is approved under section 77(1) of the Legal Services Act 2011 (as applied by **subsection (2)** of this section) to provide the service of representing a child under this section. 5
- “(2) Sections 75 to 88, 91, 101 to 105, and 112 of the Legal Services Act 2011 apply, with all necessary modifications, to any barrister or solicitor who is, or is to be, appointed under **section 162(1)** of this Act as if references in any of those sections— 10
- “(a) to a specified legal service included a reference to representing a child under **subsection (1)**; and
 - “(b) to a provider included a reference to a barrister or solicitor representing a child under **subsection (1)**. 15

“162B Costs of Court-appointed barrister or solicitor

- “(1) Despite section 162(3), where any fees and expenses have been paid under that subsection that relate to an appointment under **section 162(1)(a)** section 162(1)(a), the Court may, if it thinks it is appropriate, order a party to the proceedings to refund to the Crown an amount the Court specifies in respect of those fees and expenses. 20
- “(2) Despite section 162(3), where any fees and expenses have been paid under that subsection that relate to an appointment under **section 162(1)(b)** section 162(1)(b), the Court must make an order under **section 162B 162C**, unless the Court declines to do so in accordance with that section. 25

“162C Order requiring refund of payments in respect of barrister or solicitor representing child

- “(1) An order referred to in **section 162B(2)** must order the parties to refund to the Crown the prescribed proportion of the amount paid by the Crown, under section 162(3), in respect of the appointment of the barrister or solicitor under **section 162(1)(b)** section 162(1)(b). 30
- “(2) Each party must pay an equal share of the prescribed proportion. 35

- “(3) Despite **subsection (1)**, the Court may decline to make an order against a party if satisfied that the order would cause serious hardship to the party or to a dependent child of the party.
- “(4) Despite **subsection (2)**, if the Court is satisfied that, in view of the circumstances of the case, including the conduct of any party, it would be inappropriate to require a party to pay the amount payable in accordance with that subsection, the Court may substitute, for that party, a different amount not exceeding the prescribed proportion. 5 10
- ~~“(5) If the Court substitutes another amount under **subsection (4)**, the Court must give written reasons for doing so.~~
- “(6) In this section,—
- ~~“dependent child, in relation to a party, means a child—~~
- ~~“(a) whose care is primarily the responsibility of the party; and~~ 15
- ~~“(b) who is maintained as a member of that party’s family; and~~
- ~~“(c) who is financially dependent on that party~~
- “dependent child, in relation to a party, means a child whose care is substantially the responsibility of the party 20
- “prescribed proportion means the same proportion that is prescribed by regulations made under section 147 of the Care of Children Act 2004 for the purposes of **section 131A** of that Act 25
- “serious hardship, in relation to a party or a dependent child of the party,—
- “(a) includes significant financial difficulties that arise because of—
- “(i) the party’s inability to meet minimum living expenses according to normal community standards; or 30
- “(ii) the cost of medical treatment for an illness or injury of the party or a dependent child of the party; or 35
- “(iii) a serious illness suffered by the party or by a dependent child of the party; or

- “(iv) the cost of education for a dependent child of the party:
- “(b) does not include significant financial difficulties that arise because—
- “(i) the social activities and entertainment of the party or those of a dependent child of the party may be limited; or 5
- “(ii) the party is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards. 10
- “**162D Enforcement of orders to refund fees and expenses of Court-appointed barristers or solicitors**
- “(1) The amount that a party is ordered to refund under **section 162B(1) or 162C** is a debt due to the Crown by that party and may be enforced in a District Court or the High Court, as the case may require, in the same manner as a judgment of that Court. 15
- “(2) Despite section 113 or 123 of the District Courts Act 1947 or section 100A of the Judicature Act 1908, no Court fee is payable by a person who seeks to enforce, on behalf of the Crown, an order referred to in **subsection (1)**, but the fee that would otherwise be payable— 20
- “(a) is to be added to the amount sought to be enforced; and
- “(b) must be paid to the Registrar of the Court out of any proceeds that result from the enforcement. 25
- “(3) For the purposes of section 14(1)(b) of the Crown Proceedings Act 1950, the Secretary for Justice may, on behalf of the Crown, enforce a debt under this section.
- “**162E Time for payment of orders to refund fees and expenses of Court-appointed barristers or solicitors may be extended** 30
- “(1) If an amount that a party is ordered to refund under **section 162B(1) or 162C** is outstanding, the Registrar may enter into an arrangement with the party to allow for either or both of the following: 35
- “(a) a greater time for payment:
- “(b) payment to be made by instalments.

- “(2) No arrangement under **subsection (1)** may permit an amount to remain unpaid for more than 5 years after the date on which the arrangement is entered into.
- “(3) No action to enforce an amount that is the subject of an arrangement under this section may be taken as long as the arrangement continues in force and is duly observed. 5
- “(4) If an amount may be paid by instalments and default is made in the payment of any instalment, proceedings may be taken against the person in default as if default had been made in the payment of all instalments then remaining unpaid.” 10

47 Transitional provisions relating to eligibility of barristers or solicitors to represent child

- (1) ~~Section 162(1)(b) of the principal Act, as substituted by section 45 of this Act, applies to proceedings commenced before or after the commencement of section 45 of this Act. 15~~
- (2) ~~A barrister or solicitor who, immediately before the commencement of section 45 of this Act was, in accordance with the practice of the Family Court, eligible for appointment under section 162(1)(b) of the principal Act continues to be so eligible for a period of 6 months after that commencement, even though the barrister or solicitor has not been approved under section 77(1) of the Legal Services Act 2011. 20~~
- (3) ~~If a person to whom subsection (2) applies makes an application, within the 6-month period referred to in that subsection, for approval to provide the service of representing children under section 162(1)(b) of the principal Act, as substituted by section 45 of this Act, the eligibility conferred by subsection (2) continues until the Secretary for Justice decides the application. 25~~

48 Transitional provisions relating to reimbursement of costs of court-appointed counsel 30

- (1) Section 162(6) of the principal Act, as in force immediately before the commencement of **section 45** of this Act, continues to apply to proceedings commenced before that commencement. 35
- (2) This subsection applies to—

- (a) any order made under section 162(6) of the principal Act as in force before the commencement of **section 45** of this Act, but only if, before that commencement, no steps had been taken to enforce that order; and
- (b) any order made, after that commencement, under section 162(6) of the principal Act as continued by **subsection (1)**. 5
- (3) Despite **subsection (1)**, in relation to any orders to which **subsection (2)** applies, section 162(6) of the principal Act, as continued by **subsection (1)**, must be read as if for the words “, by order of a District Court or the High Court as the case may require, in the same manner as a judgment of that Court” there were substituted the words “in a District Court or the High Court, as the case may require, in the same manner as a judgment of that Court”. 10 15
- (4) **Sections 162B, 162C, and 162D(1)** of the principal Act as enacted by **section 46** of this Act do not apply to proceedings commenced before the commencement of **section 46**.
- (5) **Sections 162D(2) and (3) and 162E** of the principal Act, as enacted by **section 46** of this Act, apply, with any necessary modifications, to any orders to which **subsection (2)** applies. 20

Subpart 6—Property (Relationships) Act 1976

- 49 Principal Act amended**
This **subpart** amends the Property (Relationships) Act 1976. 25
- 50 Court may appoint lawyer for children**
~~(1) Section 37A(1) is amended by inserting “who is eligible for appointment” after “appoint a lawyer.”~~
Section 37A(3) and (4) are repealed.
- 51 New section 37B inserted** 30
The following section is inserted after section 37A:
~~“37B Eligibility for appointment as lawyer to represent minor or dependent children~~
~~“(1) For the purposes of section 37A(1), a lawyer is eligible for appointment if the lawyer is approved under section 77(1) of~~ 35

the Legal Services Act 2011 (as applied by **subsection (2)** of this section) to provide the service of representing any minor or dependent children under this section:

- ~~“(2) Sections 75 to 88, 91, 101 to 105, and 112 of the Legal Services Act 2011 apply, with all necessary modifications, to any lawyer who is, or is to be, appointed under section 37A(1) as if references in any of those sections—~~
- ~~“(a) to a specified legal service included a reference to representing any minor or dependent children under section 37A; and~~
- ~~“(b) to a provider included a reference to a lawyer representing any minor or dependent children under section 37A.”~~

52 Transitional provisions relating to eligibility of lawyers to represent minors or children

- (1) Section 37A(1) of the principal Act, as amended by **section 50** of this Act, applies to proceedings commenced before or after the commencement of **section 50** of this Act.
- (2) A lawyer who, immediately before the commencement of **section 50** of this Act was, in accordance with the practice of the Family Court, eligible for appointment under section 37A(1) of the principal Act continues to be so eligible for a period of 6 months after that commencement, even though the lawyer has not been approved under section 77(1) of the Legal Services Act 2011.
- (3) If a person to whom **subsection (2)** applies makes an application, within the 6-month period referred to in that subsection, for approval to provide the service of representing minors or children under section 37A(1) of the principal Act, the eligibility conferred by **subsection (2)** continues until the Secretary for Justice decides the application.

53 Transitional provisions relating to reimbursement of costs of court-appointed counsel

- (1) Section 37A(3) and (4) of the principal Act, as in force before the commencement of **section 50** of this Act, continue to apply to proceedings commenced before the commencement of **section 50**.

- (2) This subsection applies to—
- (a) any order made under section 37A(3) of the principal Act as in force before the commencement of **section 50**, but only if, before that commencement, no steps had been taken to enforce that order; and 5
 - (b) any order made, after that commencement, under section 37A(3) of the principal Act as continued by **subsection (1)**.
- (3) Despite **subsection (1)**, in relation to any orders to which **subsection (2)** applies, section 37A(4) of the principal Act, as continued by **subsection (1)**, must be read as if for the words “by order of the Court in the same manner as a judgment of that Court” there were substituted the words “in the same manner as a judgment of the Court”. 10
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	Schedule	s 24
	New Schedule 1A inserted	
	Schedule 1A	s 7
	Civil matters in respect of which legal aid is available, conditionally available, or excluded	5
	Available matters	
+	Legal aid is available in respect of the following civil matters:	
	(a) civil proceedings in a District Court or a Family Court:	
	(b) civil proceedings in the High Court, the Court of Appeal, or the Supreme Court:	10
	(c) proceedings commenced by way of application in a Youth Court under Part 7 of the Children, Young Persons, and Their Families Act 1989 or in respect of any review of any determination of, or any order made in, a Youth Court in any such proceedings:	15
	(d) proceedings before the Waitangi Tribunal:	
	(e) proceedings before the Social Security Appeal Authority:	
	(f) proceedings before the Tenancy Tribunal:	
	(g) 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:	20
	(h) proceedings before the Immigration and Protection Tribunal, as established by the Immigration Act 2009, in respect of appeals against decisions 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:	25
	(i) the processing, under Part 5 of the Immigration Act 2009, of any claim for recognition as a refugee or a protected person:	30
	(j) any proceedings before the District Court or the High Court following an application made under section 316 or 324 of the Immigration Act 2009:	35

Schedule 1A—*continued*

- (k) any appeal or review proceedings (as defined in section 4 of the Immigration Act 2009) in respect of proceedings or matters to which **paragraph (h) or (i)** applies:
- (l) 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: 5
- (m) without prejudice to any other provision of this schedule, all applications, submissions, and appeals under the Resource Management Act 1991 or to the Environment Court under any other Act: 10
- (n) without prejudice to any other provision of this schedule, 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: 15
- (o) proceedings before the tribunal under the Weathertight Homes Resolution Services Act 2006:
- (p) proceedings before a Tribunal under subpart 2 of Part 2 of the Prisoners² and Victims² Claims Act 2005 in respect of 1 or more victims² claims under that subpart: 20

Conditionally available matters or excluded matters

- 2 Despite **clause 1**, but subject to **clause 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— 25
 - (a) that the unusual complexity of the case requires that the applicant be legally represented; or 30
 - (b) that the applicant would suffer substantial hardship if aid were not granted.

Schedule 1A—*continued*

- 3 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 legal aid were not granted, legal aid is available in respect of proceedings in— 5
- (a) the Māori Land Court;
 - (b) the Māori Appellate Court;
 - (c) the Employment Court;
 - (d) the Employment Relations Authority; 10
 - (e) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006;
 - (f) a hearing of the New Zealand Parole Board (other than one in a proceeding specified in **section 6(c)(i)**) but only if the grant of legal aid is for the representation of a victim who may appear as of right or with the board's leave; 15
 - (g) any other administrative tribunal or judicial authority (not being a tribunal or an authority from which an appeal lies to any body referred to in any of **clause 1(d) to (h)**); 20
- 4 Legal aid is available in respect of appeals to the Judicial Committee of the Privy Council in civil proceedings in any case where—
- (a) 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 25
 - (b) 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. 30
- 5 Despite **clause 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; 35

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Schedule 1A—*continued*

- (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: 5
- (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 Review Board under section 18C of the Immigration Act 1987): 10
- (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): 15
- (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): 20

Legislative history

11 August 2011	Introduction (Bill 316–1)
16 August 2011	First reading and referral to Justice and Electoral Committee
