

Legal Services Amendment Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Legal Services Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill amends the Legal Services Act 2000. It proposes to change the way the legal aid scheme operates for victims of crime who apply for legal aid. The bill proposes three key amendments to the principal Act. First, the bill proposes to remove financial eligibility testing and repayment conditions for victims of crime who wish to attend parole board hearings or coronial inquests. Secondly, the bill proposes to give the Legal Services Agency the discretion to decide, at any point during the granting process, not to recover legal aid debt. Thirdly the bill allows regulations to be made to exempt particular classes of persons and proceedings from financial eligibility testing and repayment.

While there was support for the general intent of the bill, we heard suggestions that it does not go far enough. Suggestions sought further

changes to either the legal aid scheme or to the wider justice system to provide more support for victims of crime. We acknowledge these suggestions, but note that many of them are outside the scope of the bill. We further note that reviews being undertaken by the Ministry of Justice of the legal aid system and the Victims' Rights Act 2002 will cover the issues they raise.

Although we do not recommend amending the bill as a result of suggestions by submitters, we have recommended other amendments to the bill which are discussed in this commentary. Minor and technical amendments are not discussed.

Proceedings for which legal aid may be granted: civil matters

We recommend inserting new clause 4A to clarify that section 7(1)(e)(v) of the principal Act applies to coronial inquests for the purposes of Part 3 of the Coroners Act 2006 and to hearings of the New Zealand Parole Board. Section 7(1)(e)(v) of the principal Act enables legal aid to be granted for proceedings in certain administrative tribunals or judicial authorities, where the Legal Services Agency considers legal representation is required and where the applicant would suffer financial hardship if aid was not granted.

We recommend consequential amendments to clauses 5 and 6 of the bill as introduced.

Appendix

Committee process

The Legal Services Amendment Bill was referred to us on 2 April 2009. The closing date for submissions was 22 May 2009. We received and considered six submissions from interested groups and individuals. We heard two submissions.

We received advice from the Ministry of Justice.

Committee membership

Chester Borrows (Chairperson)

Jacinda Ardern

Kanwaljit Singh Bakshi

Simon Bridges

Dr Kennedy Graham

Hon Nathan Guy (from 24 June 2009)

Hon David Parker

Lynne Pillay

Paul Quinn

Dr Richard Worth (until 16 June 2009)

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Legal Services Amendment Act **2008**.

2 Commencement

This Act comes into force on the date immediately after the expiry of the period of 2 months after the date that commences on the day on which ~~it~~ this Act receives the Royal assent.

3 Principal Act amended

5

This Act amends the Legal Services Act 2000.

Part 1**Amendments to principal Act****4 Interpretation**

- (1) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order: 10

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

“**victim**—

“(a) means— 15

“(i) a person against whom an offence is committed by another person; and

“(ii) a person who, through, or by means of, an offence committed by another person, suffers physical injury or loss of, or damage to, property; and 20

“(iii) a parent or legal guardian of a child, or of a young person, who falls within subparagraph (i) or (ii), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and 25

“(iv) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and 30

“(b) despite paragraph (a), if an offence is committed by a person, does not include another person charged (whether as a principal or party or accessory after the fact or otherwise) with the commission of, or convicted or found guilty of, or who pleads guilty to,— 35

- “(i) that offence; or
 - “(ii) an offence relating to the same incident or series of incidents as that crime or offence”.
- (2) Section 4 is amended by ~~adding~~ inserting the following subsection after subsection (3): 5
- “(4) For the purposes of the definitions of **offender** and **victim** in subsection (1), the terms **child**, **immediate family**, **incapable**, **offence**, and **young person** have the meanings given in section 4 of the Victims’ Rights Act 2002.”

- 4A Proceedings for which legal aid may be granted: civil matters** 10
 - Section 7 is amended by inserting the following subsection after subsection (1):
 - “(1A) To avoid any doubt, subsection (1)(e)(v) applies, without limitation, to the following proceedings: 15
 - “(a) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; and
 - “(b) a hearing of the New Zealand Parole Board (other than one in a proceeding specified in section 6(c)(i)) that concerns an offender and is a hearing at which a victim may appear as of right or with the Board’s leave.” 20

- 5 When legal aid may be granted: civil matters**
 - Section 9(8) is repealed and the following subsection substituted:
 - “(8) Subsections (2) and (4)(a) and (b) do not apply to— 25
 - “(a) applications for legal aid in respect of victims’ claims proceedings; or
 - “(b) applications for legal aid by a victim in respect of—
 - “(i) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; or 30
 - “(ii) a hearing of the New Zealand Parole Board (other than one in a proceeding specified in section 6(c)(i)) concerning that concerns an offender and is a hearing at which the victim may appear as of right or with the Board’s leave; or 35

- “(c) applications for legal aid by a person of a class specified in regulations as exempted from the application of subsections (2) and (4)(a) and (b); or
- “(d) applications for legal aid in respect of a proceeding of a class specified in regulations as exempted from the application of subsections (2) and (4)(a) and (b).”

6 Conditions on grant of legal aid

Section 15(6) is amended by adding “; or” and also by adding the following paragraphs:

- “(d) applications for legal aid by a victim in respect of—
- “(i) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; or
- “(ii) a hearing of the New Zealand Parole Board (other than one in a proceeding specified in section 6(c)(i) concerning the that concerns an offender and is a hearing at which the victim may appear as of right or with the Board’s leave; or
- “(e) applications for legal aid by a person of a class specified in regulations as exempted from the application of this section; or
- “(f) applications for legal aid in respect of a proceeding of a class specified in regulations as exempted from the application of this section.”

7 New section 36A inserted

The following section is inserted after section 36:

“36A Agency may decide not to recover debt in certain circumstances

- “(1) The Agency may decide not to recover any debt due to the Agency under a grant of legal aid if—
- “(a) the enforcement of the debt would cause serious hardship to the aided person;
- “(b) the cost to the Agency of enforcing the debt is likely to exceed the amount of the debt that is likely to be repaid;
- “(c) the Agency considers that it would be just and equitable not to recover the debt.
- “(2) The Agency may make a decision under **subsection (1)** at the time that legal aid is granted, or at any time after it is granted.

- “(3) If the Agency decides under **subsection (1)** not to recover a debt,—
- “(a) the debt must be treated as being written off for the purposes of section 37; and
- “(b) section 37(2) to (5) apply accordingly. 5
- “(4) In **subsection (1)**, **serious hardship** has the meaning given in section 37(6).”

8 Regulations

- (1) Section 113(1) is amended by inserting the following paragraph after paragraph (o): 10
- “(oa) exempting, in accordance with **subsection (8)**, any specified class or classes of person or proceeding from the application of—
- “(i) section 9(2) and (4)(a) and (b):
- “(ii) section 15.” 15
- (2) Section 113 is amended by adding the following subsection:
- “(8) No regulations may be made for the purposes of **subsection (1)(oa)** unless the Minister is satisfied that the proposed exemption is justified on 1 or more of the following grounds: 20
- “(a) the proposed exemption is in the public interest:
- “(b) the proposed exemption facilitates access to justice:
- “(c) the proposed exemption is just and equitable in the circumstances.”

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9 Transitional provisions

- (1) In this section, **commencement date** means the commencement date of the Legal Services Amendment Act **2008**.
- (2) The provisions of the Legal Services Amendment Act **2008** apply only to applications for legal aid made on or after the commencement date. 30
- (3) **Section 36A** of the principal Act (as inserted by **section 7** of the Legal Services Amendment Act **2008**) applies to grants

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of legal aid only if the application for legal aid to which the grant relates was made on or after the commencement date.

Legislative history

14 August 2008
2 April 2009

Introduction (Bill 218-1)
First reading and referral to Justice and Electoral
Committee
