

# **Legal Services Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Legal Services Amendment Bill (the **Bill**) implements the Government's decision to strengthen legal aid so as to improve access to legal assistance for people with low incomes. There are cost barriers to accessing legal assistance. Those barriers are the user charge, which is payable by most civil and family legal aid applicants, and the interest that is charged on unpaid legal aid debt.

The Bill removes those barriers by repealing the provisions in the Legal Services Act 2011 relating to the payment of the user charge and the payment of interest on an unpaid legal aid debt.

### **Departmental disclosure statement**

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=190>

### **Regulatory impact statement**

The Ministry of Justice produced a regulatory impact statement on 10 June 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>

- <https://treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides that the Bill comes into force on the day after the date of Royal assent.

*Clause 3* provides that the Bill amends the Legal Services Act 2011 (the **principal Act**).

## Part 1

### Amendments to principal Act

#### Subpart 1—Amendments relating to removal of user charge

*Clause 4* repeals the definition of user charge in section 4 of the principal Act as this term is no longer required because of the repeal of section 18A of the principal Act (*see clause 5*).

*Clause 5* repeals section 18A of the principal Act so that it is no longer a condition of a grant of legal aid for a civil matter that the aided person pay a user charge of the prescribed amount to the lead provider.

*Clause 6* amends section 97 of the principal Act, as a consequence of the repeal of section 18A of the principal Act, to remove the requirement for a lead provider's claim for payment to show a deduction for the user charge.

*Clause 7* amends section 99 of the principal Act, as a consequence of the repeal of section 18A of the principal Act, to remove the requirement for the Legal Services Commissioner (the **Commissioner**) to deduct from a lead provider's claim for payment an amount in respect of an unpaid user charge.

*Clause 8* amends section 114 of the principal Act, as a consequence of the repeal of section 18A of the principal Act, to remove the power to make regulations prescribing the amount of the user charge.

#### Subpart 2—Amendments relating to removal of interest rate on legal aid debt

*Clause 9* repeals section 33(c) of the principal Act, as a consequence of the repeal of section 40 of the principal Act (*see clause 10*), as the amount payable to the Commissioner by an aided person will no longer include interest.

*Clause 10* repeals section 40 of the principal Act, which provides that an aided person must pay to the Commissioner interest at the prescribed rate on any debt that is owed in respect of a grant of legal aid.

*Clause 11* amends section 43 of the principal Act, as a consequence of the repeal of section 40 of the principal Act, to remove the discretion vested in the Commissioner to write off interest.

*Clause 12* repeals section 44(2) of the principal Act, as a consequence of the repeal of section 40 of the principal Act, to remove the requirement to disregard interest when assessing the cost of services.

*Clause 13* amends section 114 of the principal Act, as a consequence of the repeal of section 40 of the principal Act, to remove the power to make regulations prescribing the rate and calculation of interest payable on an unpaid legal aid debt.

### Subpart 3—Transitional, savings, and related provisions

*Clause 14* inserts a *new Part 2* into Schedule 1AA of the principal Act, which sets out transitional, savings, and related provisions. *New Part 2* provides that if, on the day on which this Bill commences (the **commencement date**), an aided person has any liability in respect of the payment of the user charge or interest, that liability continues after the commencement date until the liability is discharged or otherwise settled.

## Part 2

### Consequential amendments to Legal Services Regulations 2011

*Clause 15* provides that *Part 2* amends the Legal Services Regulations 2011 (the **principal regulations**).

*Clause 16* revokes regulations 9A and 9B of the principal regulations and the cross-heading above regulation 9A. These regulations relate to the user charge and are no longer required because of the repeal of section 18A of the principal Act.

*Clause 17* revokes regulations 14 and 14A of the principal regulations and the cross-heading above regulation 14. These regulations relate to the payment of interest and are no longer required because of the repeal of section 40 of the principal Act.



*Hon Kiritapu Allan*

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

- 1 Title**  
This Act is the Legal Services Amendment Act **2022**.
- 2 Commencement**  
This Act comes into force on the day after the date of Royal assent. 5
- 3 Principal Act**  
This Act amends the Legal Services Act 2011.

- |                                    |   |    |
|------------------------------------|---|----|
| <b>Part 1</b>                      |   |    |
| <b>Amendments to principal Act</b> |   |    |
|                                    | Subpart 1—Amendments relating to removal of user charge   | 10 |
| <b>4</b>                           | <b>Section 4 amended (Interpretation)</b><br>In section 4(1), repeal the definition of <b>user charge</b> .   |    |
| <b>5</b>                           | <b>Section 18A repealed (User charge payable by aided person)</b><br>Repeal section 18A.  |    |
| <b>6</b>                           | <b>Section 97 amended (Lead provider to claim for payment)</b><br>Replace section 97(2)(a) with:<br>(a) the fees claimed by, or the charges attributable to, the lead provider; and | 15 |
| <b>7</b>                           | <b>Section 99 amended (Secretary to refer claim to Commissioner for decision)</b><br>Repeal section 99(4)(e).   | 20 |
| <b>8</b>                           | <b>Section 114 amended (Regulations)</b><br>Repeal section 114(1)(ea).  |    |

Subpart 2—Amendments relating to removal of interest rate on legal aid debt

- 9 Section 33 amended (Amount payable by aided person to Commissioner)**  
Repeal section 33(c).
- 10 Section 40 amended (Interest on unpaid legal aid debt)** 5  
Repeal section 40.
- 11 Section 43 amended (Commissioner may write off amounts payable)**  
In section 43(1), delete “interest,”.
- 12 Section 44 amended (Commissioner to refund excess payments)** 10  
Repeal section 44(2).
- 13 Section 114 amended (Regulations)**
- (1) Repeal section 114(1)(k).
- (2) In section 114(2), delete “including the calculation of interest,”.

Subpart 3—Transitional, savings, and related provisions

- 14 Schedule 1AA amended** 15  
In Schedule 1AA,—
- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

**Part 2**

**Consequential amendments to Legal Services Regulations 2011** 20

- 15 Principal regulations**  
This Part amends the Legal Services Regulations 2011.
- 16 Regulations 9A and 9B and cross-heading above regulation 9A revoked**  
Revoke regulations 9A and 9B and the cross-heading above regulation 9A.
- 17 Regulations 14 and 14A and cross-heading above regulation 14 revoked** 25  
Revoke regulations 14 and 14A and the cross-heading above regulation 14.

## Schedule Schedule 1AA amended

s 14

<b>Part 2</b>		
	<b>Provisions relating to Legal Services Amendment Act 2022</b>	5
<b>3</b>	<b>Interpretation</b>	
	In this Part,—	
	<b>2022 Act</b> means the Legal Services Amendment Act <b>2022</b>	
	<b>commencement date</b> means the date on which the 2022 Act comes into force	
	<b>legal aid debt</b> means a debt owed to the Commissioner in respect of a grant of legal aid.	10
<b>4</b>	<b>User charge</b>	
(1)	This clause applies in respect of a grant of legal aid for a civil matter that immediately before the commencement date was subject to the condition in section 18A(1) (that the aided person pay a user charge of the prescribed amount to the lead provider).	15
(2)	On and after the commencement date,—	
	(a) the grant of legal aid continues to be subject to the condition as if section 18A(1) had not been repealed by the 2022 Act; and	
	(b) the following provisions, as in force immediately before the commencement date, continue to apply as if the 2022 Amendment Act had not been enacted:	20
	(i) section 18A(2) and (3):	
	(ii) section 97(2)(a):	
	(iii) section 99(4)(e):	25
	(iv) regulation 9A of the Legal Services Regulations 2011.	
<b>5</b>	<b>Interest on unpaid legal aid debt</b>	
(1)	This clause applies in respect of any interest on a legal aid debt that immediately before the commencement date was payable by an aided person to the Commissioner under section 40.	30
(2)	On and after the commencement date,—	
	(a) the interest continues to be payable by the aided person as if section 40 had not been repealed by the 2022 Act; and	
	(b) the following provisions, as in force immediately before the commencement date, continue to apply as if the 2022 Act had not been enacted:	35



- (i) section 33(c):
- (ii) section 43(1):
- (iii) section 44(2):
- (iv) regulations 14 and 14A of the Legal Services Regulations 2011.