

Legal Services Amendment Bill (No 2)

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,	Text struck out by a majority
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New (majority)

Subject to this Act,	Text inserted by a majority
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Hon Mark Burton

Legal Services Amendment Bill (No 2)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Legal Services Amendment Act **(No 2) 2005**.

2 Commencement

- (1) This Act <(except **sections 28(2), 29, 30, 30A and 39**)> comes into force on a date to be appointed by the Governor-General by Order in Council. 5

New (majority)

- | |
|--|
| (2) Sections 28(2), 29, 30, 30A and 39 come into force on the day after the date on which this Act receives the Royal assent. |
|--|

2A Principal Act amended

This Act amends the Legal Services Act 2000.

Part 1**Amendments to principal Act****3 Interpretation** 5

(1) Section 4(1) is amended by repealing the definitions of **aided person**, **contribution**, and **disposable income**.

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

“**aided person**— 10

“(a) means a person who is or has been granted legal aid under this Act or the former Act; and

“(b) includes a person whose grant of legal aid has been withdrawn under **section 27** of this Act

“**capital**, in relation to a person, means that person’s capital as described in **Schedule 1** 15

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

“(a) the fees of, or charges attributable to, the lead provider, as approved for payment under section 75 or prescribed by regulations; and 20

“(b) the fees of, or charges attributable to, any other listed provider who acted on the matter, as approved for payment under section 75 or prescribed by regulations; and

“(c) the disbursements claimed by the lead provider and any other listed provider who acted on the matter, as approved for payment under section 75 25

“**income**, in relation to a person, means that person’s income as described in **Schedule 1**

“**interim repayment** means the amount that an aided person is required to pay to the Agency under **section 15(1)** as a condition of a grant of legal aid 30

“**prescribed repayment amount** is the amount, based on income and capital, set by regulations made under this Act for the purposes of **sections 17(1) and 18<(3)>**

“**proposed care recipient** has the meaning given to it by section 6(4) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 35

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

“**repayment** means the amount of money that an aided person is required to pay to the Agency under **section 15(2)** as a condition of a grant of legal aid.” 5

4 Proceedings for which legal aid may be granted: civil matters

New (majority)

(1AA) Section 7(4)(f) is amended by omitting “Residence Appeal Authority” and substituting “Residence Appeal Board”. 10

(1) Section 7(4) is amended by adding the following paragraph:
 “(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).” 15

5 New sections 8 and 9 substituted

Sections 8 and 9 are repealed and the following sections substituted:

“8 When legal aid may be granted: criminal matters” 20

“(1) The Agency may grant legal aid to an applicant in respect of proceedings to which section 6 applies (criminal matters) if—
 “(a) the applicant is a natural person charged with or convicted of an offence; and
 “(b) it appears to the Agency that the applicant does not have sufficient means to enable him or her to obtain legal assistance; and 25

Struck out (majority)

“(c) the Agency considers that the interests of justice require that the applicant be granted legal aid.”

New (majority)

“(c) either—

“(i) the offence to which the application relates is punishable by a maximum term of imprisonment of 6 months or more; or

“(ii) it appears to the Agency that the interests of justice require that the applicant be granted legal aid.

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Struck out (majority)

“(2) For the purposes of **subsection (1)(c)**, the interests of justice always require that legal aid be granted to an applicant who is a natural person charged with or convicted of an offence punishable by a maximum term of imprisonment of 6 months or more, and who does not have sufficient means to enable him or her to obtain legal assistance.

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“(3) When considering whether or not the interests of justice require that the applicant be granted legal aid, the Agency must have regard to *<all of the following:>*~~—~~

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New (majority)

“(aa) whether the applicant has any previous conviction; and

“(a) whether the applicant is charged with or convicted of an offence punishable by imprisonment; and

“(b) whether there is a real likelihood that the applicant, if convicted, will be sentenced to imprisonment; and

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Struck out (majority)

“(c) the complexity of the proceedings; and

“(d) whether the proceedings involve a substantial question of law; and

New (majority)

“(da) whether there are complex factual, legal, or evidential matters that require the determination of a court; and

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- “(e) whether the applicant is able to understand the proceedings or ~~<state>~~ ~~<present>~~ his or her own case~~<, whether orally or in writing>~~; and
- “(f) in any proceeding to which section 6(c) applies, the consequences for the applicant if legal aid is not granted; and 5
- “(g) in respect of an appeal, the grounds of the appeal.
- “(4) When considering whether or not the interests of justice require that the applicant be granted legal aid, the Agency may have regard to any other circumstances that, in the opinion of the Agency, are relevant. 10
- “(5) When determining whether or not an applicant has sufficient means to enable him or her to obtain legal assistance, the Agency must have regard to the applicant’s income and disposable capital. 15
- “(6) **Subsection <(2)>** ~~<(1)(c)(i)>~~ does not apply in respect of—
- “(a) an appeal; or
- “(b) a proceeding to which section 6(c) applies.
- “(7) Despite **subsection (1)(a)**, the Agency 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 these proceedings are heard in a Youth Court. 20
- “**9 When legal aid may be granted: civil matters** 25
- “(1) The Agency must, subject to this section and **sections 10** and **11**, grant legal aid to an applicant in respect of proceedings to which section 7 applies (civil proceedings) if the applicant is—
- “(a) a natural person, whether resident in New Zealand or not; or 30
- “(b) a trustee corporation (as defined in section 2(1) of the Administration Act 1969) that applies for legal aid in connection with proceedings in which it is concerned in a representative, fiduciary, or official capacity. 35
- “(2) The Agency must refuse to grant legal aid to an applicant whose income ~~<and>~~ ~~<or>~~ disposable capital exceed the relevant thresholds prescribed in regulations made under this Act, unless the Agency is satisfied that there are special circumstances having regard to— 40

- “(a) the likely cost of *<bringing>* *<the>* proceedings *<to the applicant>*; or
- “(b) the applicant’s ability to fund the proceedings if legal aid is not granted.
- “(3) The Agency must refuse to grant legal aid if the applicant has not shown that the applicant has reasonable grounds for taking or defending the proceedings or being a party to the proceedings. 5
- “(4) The Agency may *<also>* refuse *<to grant>* legal aid to an applicant in any of the following circumstances: 10
- “(a) the Agency is unable to obtain full information concerning the applicant’s financial affairs because of the default or failure of the applicant:
- “(b) in the opinion of the Agency, the *<amount of the repayment that the applicant is likely to be required to make is greater than>* *<prescribed repayment amount will exceed>* the likely cost of the proceedings for which legal aid is sought: 15
- “(c) the applicant is not resident in New Zealand and the Agency considers that the proceedings might reasonably be brought in a jurisdiction other than New Zealand: 20
- “(d) in the case of original proceedings,—
- “(i) the applicant’s prospects of success are not sufficient to justify the grant of legal aid; or 25
- “(ii) the grant of legal aid is not justified, having regard to the nature of the proceedings and the applicant’s interest in them (financial or otherwise), in relation to the likely cost of the proceedings; or 30
- “(iii) for any other cause where it appears unreasonable or undesirable that the applicant should receive legal aid in the particular circumstances of the case:
- “(e) in the case of an appeal (whether or not in respect of proceedings in which the applicant has received legal aid), the Agency considers that for any reason the grant of legal aid or further legal aid is not justified. 35
- “(5) The Agency may *<refuse to>* grant legal aid *<under subsection (1)>* to an applicant in respect of any original proceeding under 40

an enactment specified in **Schedule 4**, if the Agency considers that the grant of legal aid is <not> justified.

- “(6) In determining <whether a grant> under **subsection (5)** <is justified.> <whether a grant of legal aid is not justified.> the Agency must have regard to—
 - “(a) any previous proceedings in the matter to which the application relates; and
 - “(b) any personal protection issues such as (without limitation) any orders relating to domestic violence, protection of personal property rights, compulsory treatment, or compulsory care; and
 - “(c) the interests and welfare of any other person who may be affected by the outcome of the proceedings; and
 - “(d) whether there are any complex factual, legal, or evidential matters that require the determination of a court; and
 - “(e) whether it is in the public interest that legal aid be granted.
- “(7) To avoid doubt, legal aid in respect of civil proceedings is not available to any body of persons, whether corporate or unincorporate, except as provided in **subsection (1)** and section 42.

New (majority)

“(7A) **Subsections (2), (4)(a) and (b)** do not apply to applications for legal aid in respect of victims’ claims proceedings.

- “(8) **Subsections (1), (2), and (4)(a)** do not apply to applications for legal aid under section 42 in respect of certain proceedings before the Waitangi Tribunal.
- “(9) **Subsection (4)(d)(i)** does not apply to original proceedings under an enactment specified in **Schedule 4.**”

6 Other situations where legal aid refused or limited: civil matters

Section 10(1) is amended by repealing paragraph (b) and substituting the following paragraphs:

- “(b) is lawfully in New Zealand only by virtue of being the holder of a temporary permit or a limited purposes permit; or
- “(c) is not in New Zealand and—

- “(i) is not a New Zealand citizen; or
- “(ii) does not hold a current returning resident’s visa under section 14C of the Immigration Act 1987.”

7 New section 12 substituted

Section 12 is repealed and the following section substituted: 5

“12 Application for grant of legal aid

“(1) An application for a grant of legal aid—

“(a) must be made in the prescribed manner to the Agency; and

“(b) must include a statement of financial means in a form prescribed by the Agency; and 10

Struck out (majority)

“(c) may be made at any time before the final disposition; and

“(d) must not be made after the final disposition unless the Agency receives the application within 10 working days from the date of the final disposition and the Agency is satisfied that— 15

“(i) the application was delayed because of circumstances beyond the control of the applicant and the listed provider, and those circumstances could not have been reasonably anticipated; and 20

“(ii) the applicant and the listed provider took all reasonable steps to apply before the final disposition.

New (majority)

“(c) must, subject to **subsection (1A)**, be made before the final disposition. 25

“(1A) An application for a grant of legal aid may be made after the final disposition only if—

“(a) the Agency receives the application within 15 working days from the date of the final disposition; and 30

“(b) the Agency is satisfied that—

“(i) the application was delayed because of circumstances beyond the control of the applicant and

New (majority)

the listed provider, and those circumstances could not have been reasonably anticipated; and
 “(ii) the applicant and the listed provider took all reasonable steps to apply before the final disposition.

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

8 Special provisions relating to minors and mentally disordered persons

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- (1) Section 13(1)(a) is amended by omitting “contribution” and substituting “repayment”.
- (2) Section 13(4) is amended by omitting “contribution” and substituting “repayment”.

New (majority)

8A Decision on application for legal aid

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Section 14(2)(b) is amended by omitting “and any other listed provider who may provide services under the grant”.

9 New section 15 substituted

Section 15 is repealed and the following section substituted:

“15 Conditions on grant of legal aid

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- “(1) A grant of legal aid may be subject to a condition that the aided person must pay to the Agency an interim repayment of a specified amount calculated in accordance with **section 17**.
- “(2) Every grant of legal aid is subject to the condition that the aided person must pay to the Agency a repayment calculated in accordance with **section 18**.
- “(3) A grant of legal aid may be subject to a condition that the aided person must authorise a charge to be registered in favour of the Agency over specified property of the aided person as security for the interim repayment, repayment, or both.
- “(4) The Agency may lodge a caveat under section 137 of the Land Transfer Act 1952 on property over which a charge could be

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registered in favour of the Agency, regardless of whether the aided person has complied with any condition imposed under **subsection (3)**.

New (majority)

“(4A) ~~((**Subsection (1) and**) **Subsection (1)**, the provisions of **subsection (3)** relating to a charge as security for payment of an interim repayment required by a condition referred to in ~~((**subsection (1))** **subsection (1), and subsection (4)**—~~~~

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“(a) do not apply to the maximum grant under section 20(4) of legal aid in respect of victims’ claims proceedings; but

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“(b) apply to an amendment under **section 24(2A)** of the maximum grant under section 20(4) of legal aid in respect of proceedings of that kind.

“(5) This section does not apply to—

“(a) applications for legal aid under section 42 in respect of certain proceedings before the Waitangi Tribunal; or

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“(b) applications for legal aid by the proposed patient in proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

“(c) applications for legal aid by the proposed care recipient in proceedings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.”

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10 New sections 17 and 18 substituted

Sections 17 and 18 are repealed and the following sections substituted:

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“17 Interim repayments payable

“(1) If an interim repayment is payable under a grant of legal aid, the Agency must determine the amount of the interim repayment by having regard to the prescribed repayment amount set by regulations made under this Act.

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“(2) The Agency may require an aided person to start making interim repayments at any time after legal aid has been granted.

“18 Amount of repayment payable

Struck out (majority)

- “(1) The repayment payable by an aided person under **section 15(2)**,—
 - “(a) if there are proceeds of proceedings, is the amount calculated under **subsection (2)**; and 5
 - “(b) if there are no proceeds of proceedings, is the lesser of—
 - “(i) the amount calculated under **subsection (2)**;
 - “(ii) the amount calculated under **subsection (3)**.
- “(2) The amount referred to in **subsection (1)(a) and (1)(b)(i)** is the cost of services minus— 10
 - “(a) any interim repayment paid by the aided person; and
 - “(b) any deductions allowed by the Agency in accordance with this Act or any regulations made under this Act.
- “(3) The amount referred to in **subsection (1)(b)(ii)** is the prescribed repayment amount minus— 15
 - “(a) any interim repayment paid by the aided person; and
 - “(b) any deductions allowed by the Agency in accordance with this Act or any regulations made under this Act.

New (majority)

- “(1) This section sets out the repayment payable by an aided person under **section 15(2)**. 20
- “(2) The repayment payable if the proceeds of proceedings are less than the cost of services is determined by—
 - “(a) adding the proceeds of proceedings and the prescribed repayment amount; and 25
 - “(b) subtracting from the amount obtained under **paragraph (a)**—
 - “(i) the amount (if any) by which it exceeds the cost of services; and
 - “(ii) any interim repayment paid by the aided person; and 30
 - “(iii) any deductions allowed by the Agency in accordance with this Act or any regulations made under this Act.

New (majority)

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| “(3) The repayment payable if the proceeds of proceedings equal or exceed the cost of services is the cost of services minus—
“(a) any interim repayment paid by the aided person; and
“(b) any deductions allowed by the Agency in accordance with this Act or any regulations made under this Act. | 5 |
| “(4) The repayment payable if there are no proceeds of proceedings is the lesser of—
“(a) the cost of services minus—
“(i) any interim repayment paid by the aided person; and
“(ii) any deductions allowed by the Agency in accordance with this Act or any regulations made under this Act;
“(b) the prescribed repayment amount minus the amounts referred to in paragraph (a)(i) and (ii) . | 10
15 |
| “(5) The prescribed repayment amount referred to in subsection (2)(a) is zero in respect of victims’ claims proceedings. | |
| “(6) Subsection (4) does not apply to victims’ claims proceedings.” | |

11 New section 22 substituted

Section 22 is repealed and the following section substituted: 20

“22 Agency to be notified of change in circumstances

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|--|----------|
| “(1) An aided person (and any person acting for an aided person as <u><a lawyer,></u> next friend, guardian ad litem, or in any other capacity) must notify the Agency of the following:
“(a) any increase in the income or disposable capital of (or being treated as being of) the aided person by an amount that could affect the aided person’s eligibility for legal aid:
“(b) any change to the address of the aided person (and the person acting for the aided person, if applicable). | 25
30 |
| “(2) A person applying for legal aid (in this section, the applicant) must notify the Agency of the following:
“(a) any increase in the income or disposable capital of (or being treated as being of) the applicant by an amount that could affect the applicant’s eligibility for legal aid:
“(b) any change to the applicant’s address. | 35 |

“(3) A person who is no longer an aided person, but who becomes aware that he or she, while an aided person, received an increase in his or her income or disposable capital that could have affected his or her eligibility for legal aid, must notify the Agency of that fact as soon as practicable.

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New (majority)

“(4) For the purposes of **subsection (1)**, an aided person is deemed to have waived any legal professional privilege that might otherwise prevent a person acting for the aided person from complying with **subsection (1)**.”

12 Agency to keep aided person informed

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(1) Section 23(1) is amended by repealing paragraph (d) and substituting the following paragraphs:

“(d) when the repayment payable (as determined under *<section 18(1)>* **<section 18>**) is settled by the Agency; and

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New (majority)

“(e) when an amendment is made to the maximum grant of legal aid.”

(2) Section 23(2) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) a statement of any amounts currently owing by the aided person, whether as an interim repayment or a repayment; and”.

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13 New section 23A inserted

The following section is inserted after section 23:

“23A Private mediation

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“(1) In this section, **private mediation** means any mediation other than mediation that is—

“(a) ordered by *<the>* *<a>* court; or

“(b) part of a court process or proceeding; or

“(c) part of a dispute resolution process under any enactment.

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Struck out (majority)

“(2) This section applies to an aided person who seeks funding for private mediation as part of an existing grant of legal aid.

“(3) The Agency *<must not>* *<may>* fund legal services related to private mediation *<unless it is satisfied that>* *<in respect of any matter for which legal aid may be granted under section 7 if the Agency is satisfied that>*—

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“(a) the matter is suitable for private mediation; and

“(b) there is a reasonable likelihood that private mediation will resolve the dispute or part of the dispute.”

14 New section 24 substituted

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Section 24 is repealed and the following section substituted:

“24 Application for amendment to grant of legal aid

“(1) An application for an amendment to a grant of legal aid—

“(a) must be made by either the aided person or the listed provider; and

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“(b) must be made in the prescribed manner to the Agency; and

Struck out (majority)

“(c) may be made at any time before the final disposition; and

“(d) must not be made after the final disposition unless the Agency receives the application within 10 working days from the date of the final disposition and the Agency is satisfied that—

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“(i) the application was delayed because of circumstances beyond the control of the applicant and the listed provider, and those circumstances could not have been reasonably anticipated; and

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“(ii) the applicant and the listed provider took all reasonable steps to apply before the final disposition.

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New (majority)

- “(c) must, subject to **subsection (1A)**, be made before the final disposition.
- “(1A) An application for an amendment to a grant of legal aid may be made after the final disposition only if—
 - “(a) the Agency receives the application within 15 working days from the date of the final disposition; and 5
 - “(b) the Agency is satisfied that—
 - “(i) the application was delayed because of circumstances beyond the control of the applicant and the listed provider, and those circumstances could not have been reasonably anticipated; and 10
 - “(ii) the applicant and the listed provider took all reasonable steps to apply before the final disposition.
- “(2) Following an application for amendment to a grant of legal aid, the Agency may *⟨, subject to **section 27,**⟩* confirm the grant or amend it in any manner consistent with this Act and any regulations made under it. 15

New (majority)

- “(2A) However, the Agency may, on an application under this section, amend the maximum grant under section 20(4) of legal aid in respect of victims’ claims proceedings only if satisfied that the aided person would, if **section 9(2)(i, (4)(a), and (b))** applied to his or her application for legal aid in respect of those proceedings, be granted legal aid. 20
- “(2B) The Agency may, in either or both of the following circumstances, refuse to amend under **subsection (2A)** the maximum grant under section 20(4) of legal aid in respect of victims’ claims proceedings: 25
 - “(a) the Agency is unable to obtain full information concerning the applicant’s financial affairs, because of the default or failure to the applicant: 30

New (majority)

Struck out

“(b) if, in the opinion of the Agency, the amount of the interim repayment that the applicant is likely to be required to make is greater than the likely cost of the proceedings.

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New

“(b) if, in the opinion of the Agency, the prescribed repayment amount will exceed the likely cost of the proceedings.

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

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15 New section 25 substituted

Section 25 is repealed and the following section substituted:

“25 Withdrawal <of,> or amendment <of> <to,> grant of legal aid: criminal matters

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In relation to a criminal matter, the Agency may at any time—
“(a) withdraw legal aid from, or amend a grant of legal aid to, an aided person if—

“(i) the Agency is satisfied that the aided person has sufficient means to enable the person to obtain legal assistance and representation; or

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“(ii) the Agency considers that the interests of justice no longer require that legal aid be given to the person; or

“(iii) the aided person requests it; or

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“(b) amend the conditions on a grant of legal aid <(as determined under **section 15**)> <(other than the condition referred to in **section 15(2)**)> if the Agency considers that the conditions of the grant of legal aid are no longer appropriate.”

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New (majority)

- 16 Withdrawal of, or amendment to, grant of legal aid: civil matters**
- (1) Section 26(1) is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) the grant of legal aid includes a condition that the aided person pay an interim repayment, and payment of that interim repayment is—
- “(i) more than 21 days in arrears; or
- “(ii) unpaid by any date to which the Agency has extended the time for paying the interim repayment.”
- (2) Section 26(2) is amended by inserting “at any time” after “In relation to a civil matter, the Agency may”.
- (3) Section 26 is amended by adding the following subsection:
- “(3) In relation to a civil matter, the Agency may at any time amend the conditions on a grant of legal aid *<(as determined under **section 15**>* *<(other than the condition referred to in **section 15(2)**>* if the Agency considers that the conditions of the grant of legal aid are no longer appropriate.”
- 17 New section 27 substituted**
- Section 27 is repealed and the following section substituted:
- “27 Withdrawal of grant**
- “(1) This section applies when the Agency proposes (other than with the agreement, or at the request, of the aided person) to withdraw a grant of legal aid, under *<any of **sections 24, 25, or 26**>* *<**section 25 or section 26**>*, in such a way that the aided person is likely to be detrimentally affected.
- “(2) A grant of legal aid must not be withdrawn until—
- “(a) notice of intention to withdraw the grant has been given to the aided person and the lead provider; and
- “(b) the aided person has been given a reasonable opportunity under the notice to make submissions on why the grant should not be withdrawn in the manner indicated; and
- “(c) the Agency has considered any submission by or on behalf of the aided person.

New (majority)

- “(3) If a grant is withdrawn, the Agency must immediately notify the aided person and the lead provider of—
- “(a) the date on which the withdrawal takes effect, which must be a date on or after the date on which the Agency reasonably believes the aided person will receive the notice; and
 - “(b) the reasons for the withdrawal; and
 - “(c) the aided person’s rights to seek a reconsideration under section 29 and a review under **section 54.**”

18 Consequences of withdrawing legal aid 10

Section 28 is amended by repealing subsections (2) and (3) and substituting the following subsections:

- “(2) If legal aid is withdrawn from an aided person because of an increase in the person’s income or disposable capital, the Agency may recover from the aided person any amount paid or payable by the Agency under the grant (less any interim repayment already paid by the person) in respect of the period—
- “(a) beginning on or after the date on which the person first received the increase to the person’s income or disposable capital that has affected entitlement to legal aid; and
 - “(b) the date of withdrawal of legal aid.
- “(3) Any amount recoverable by the Agency under **subsection (2)** is to be treated for all purposes as if it were a repayment payable by the aided person to the Agency.” 25

19 Amount payable by aided person to Agency

- (1) Section 30(a) is amended by omitting “contributions” and substituting “interim repayments”.

New (majority)

- (2) Section 30(b) is amended by omitting “18(1)” and substituting “18”. 30

20 New sections 31 and 31A substituted

Section 31 is repealed and the following sections are substituted:

- “31 Amounts payable under conditions of grant are debts due to Agency**
- “(1) An amount payable to the Agency as a condition of a grant of legal aid (whether as an interim repayment or a repayment) is a debt due to the Agency, and may be recovered in any court or tribunal of competent jurisdiction. 5
- “(2) Interest that is payable under **section 35A** is a debt due to the Agency, and may be recovered in any court or tribunal of competent jurisdiction.
- “(3) The Agency may, by agreement with the aided person, make whatever arrangements (including any adjustments to those arrangements) it considers appropriate for the payment by the aided person of any amount payable under a grant of legal aid, or any other debt payable to the Agency by the aided person. 10
- “(4) In making any arrangements under **subsection (3)**, the Agency must have regard to the following principles: 15
- “(a) any debt that is to be paid from the aided person’s income should be paid by the aided person within 5 years from when the debt arises:
- “(b) any debt that is to be paid from the aided person’s income and capital should be paid by the aided person within 7 years from when the debt arises. 20
- “(5) Despite **subsection (4)**, the Agency may, after having regard to the principles in that subsection, make whatever arrangements it considers appropriate in the circumstances. 25
- “31A Agency may adjust rate of payment of debt, etc**
- “(1) The Agency may, in accordance with this section,—
- “(a) adjust the rate of payment of a debt by an aided person; or
- “(b) require an aided person to commence or recommence payment of a debt. 30
- “(2) The Agency must not make a decision under **subsection (1)(a) or (b)** unless—
- “(a) the Agency considers, in light of new information, that the decision is justified; and 35
- “(b) reasonable efforts to reach agreement with the aided person have failed.
- “(3) No adjustment to the rate of payment of a debt may be made until the Agency—

- “(a) notifies the aided person in writing of its intention to make the adjustment; and
- “(b) provides the aided person with reasons for the proposed adjustment; and
- “(c) gives the aided person a reasonable opportunity to make submissions on why the adjustment should not be made in the manner indicated; and 5
- “(d) considers any submissions by the aided person.
- “(4) The Agency may not require an aided person to commence or recommence payment of a debt until the Agency— 10
- “(a) notifies the aided person in writing of its intention to require the aided person to commence or recommence payment of the debt; and
- “(b) provides the aided person with reasons why payment of the debt should commence or recommence; and 15
- “(c) gives the aided person a reasonable opportunity to make submissions on why the person should not commence or recommence payment of the debt in the time indicated; and
- “(d) considers any submissions by the aided person. 20
- “(5) If the Agency decides to adjust the rate of payment of a debt or require an aided person to commence or recommence payment of a debt, the Agency must notify the aided person in writing of—
- “(a) its decision; and 25
- “(b) the aided person’s right to seek a reconsideration under section 29 or a review under section 54; and
- “(c) the date on which the decision takes place (which must be no earlier than the day after the date that the Agency reasonably believes the aided person will receive notice under this subsection).” 30

21 Charges on proceeds of proceedings

Section 32(1) is amended by repealing paragraph (a).

22 New section 35A inserted

The following section is inserted after section 35:

“35A Interest on unpaid legal aid debt

Struck out (majority)

- “(1) The Agency may require an aided person who defaults on the payment of a debt due to the Agency to pay interest on the unpaid amount. 5
- “(2) Any interest charged by the Agency under **subsection (1)** must be at a rate specified in regulations made under this Act.

New (majority)

- “(1) The Agency may require an aided person who defaults on the payment of a debt due to the Agency to pay interest on the entire unpaid debt in respect of the period during which the aided person is in default. 10
- “(2) Any interest charged by the Agency under **subsection (1)** must be at the rate specified in regulations made under this Act.”

23 New section 37 substituted

15

Section 37 is repealed and the following section substituted:

“37 Agency may write off amounts payable

- “(1) The Agency may write off all or any part of any interim repayment, repayment, interest, or any other debt payable to the Agency by an aided person in any of the following circumstances: 20
 - “(a) the enforcement of the debt would, in the opinion of the Agency, 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: 25
 - “(c) the Agency considers that *justice and fairness would best be served by writing* ~~it would be just and equitable to write~~ off the debt.
- “ (2) When a debt has been written off under this section, the Agency must give notice to the debtor of the write-off. 30
- “ (3) When a debt is written off under this section, the debtor is, from the date of the write-off, no longer liable to pay the debt.

- “(4) If, despite the write-off, a debtor repays some or all of a written-off debt, the Agency must return the amount that was written off.
- “(5) The write-off of a debt does not affect the Agency’s obligation to pay any person who provided legal services under the relevant grant of legal aid. 5
- “(6) In **subsection (1), serious hardship** means significant financial difficulties that arise because of—
- “(a) the aided person’s inability to meet minimum living expenses according to normal community standards; or 10
- “(b) the cost of medical treatment of an illness or injury of the aided person or the aided person’s dependant; or
- “(c) a serious illness suffered by the aided person or the aided person’s dependant.”
- 24 Aided person may request examination of cost of services** 15
Section 38(1) is amended by omitting “(as defined in section 18(2))”.
- 25 Agency to refund excess payments** 20
Section 39(b) is amended by omitting “as defined in section 18(2)”.
- 26 New sections 40 and 41 substituted**
Sections 40 and 41 are repealed and the following sections substituted:
- “40 Liability of aided person for costs** 25
- “(1) If an aided person receives legal aid for civil proceedings, that person’s liability under an order for costs made against him or her with respect to the proceedings must not exceed an amount (if any) that is reasonable for the aided person to pay having regard to all the circumstances, including the means of all the parties and their conduct in connection with the dispute. 30
- “(2) No order for costs may be made against an aided person in a civil proceeding unless the court is satisfied that *<there is misconduct by the aided person in the course of the proceeding>* <there are exceptional circumstances>. 35

- “(3) In determining whether *⟨there has been misconduct by the aided person⟩* *⟨there are exceptional circumstances⟩* under **subsection (2)**, the court may take account of, but is not limited to, the following *⟨factors⟩* *⟨conduct by the aided person⟩*:
- “(a) any conduct that causes the other party to incur unnecessary cost: 5
- “(b) any failure to comply with the procedural rules and orders of the court:
- “(c) any *⟨deceitful or misleading⟩* *⟨misleading or deceitful⟩* conduct: 10
- “(d) any unreasonable pursuit of 1 or more issues on which the aided person fails:
- “(e) any unreasonable refusal to negotiate a settlement or participate in alternative dispute resolution:
- “(f) any other conduct that abuses the processes of the court. 15
- “(4) Any order for costs made against the aided person must specify the amount that the person would have been ordered to pay if this section had not affected that person’s liability.

New (majority)

- “(4A) If, because of this section, no order for costs is made against the aided person, an order may be made specifying what order for costs would have been made against that person with respect to the proceedings if this section had not affected that person’s liability. 20
- “(5) If an order for costs is made against a next friend or guardian ad litem of an aided person who is a minor or is mentally disordered, then— 25
- “(a) that next friend or guardian ad litem has the benefit of this section; and
- “(b) the means of the next friend or guardian ad litem are taken as being the means of the aided person. 30
- 41 Costs of successful opponent of aided person**
- “(1) This section applies if an order is made under **section 40** that specifies that an aided person would have incurred a liability, or a greater liability, for costs if that section had not affected his or her liability. 35

- “(2) If this section applies, the party to the proceedings who is prejudiced by the operation of **section 40** (in this section the **applicant**) may apply to the Agency in the prescribed manner for payment by the Agency of some or all of the difference between the costs (if any) actually awarded to that party against the aided person and those to which that party would have been entitled if **section 40** had not affected the aided person’s liability. 5
- “(3) In considering any such application, the Agency must have regard to the following matters: 10
- “(a) the conduct of the parties to the proceedings:
- “(b) the court’s findings under **section 40(2)**:
- “(c) the hardship that would be caused to the applicant if the costs were not paid by the Agency.
- “(4) For the purposes of **subsection (3)(c)**, the Agency may require any person to furnish information on the financial circumstances and needs of the applicant. 15
- “(5) If, having regard to the matters specified in **subsection (3)** and to any information received under **subsection (4)**, and to all relevant circumstances, the Agency considers that any payment should be made by the Agency to the applicant, it may determine accordingly and must make the payment. 20
- “(6) The Agency may recover any payment<s> made under this section from the aided person as a debt due to the Agency<, unless the payment relates to an order made under **section 40(4A)**>. 25
- “(7) The Agency may make a payment under this section to a lawyer who is not a listed provider under this Act.”

27 **New section 45 substituted**

Section 45 is repealed and the following section substituted: 30

“45 **Repayment under grant of legal aid**

- “(1) A condition requiring repayment of an amount under a grant of legal aid made under section 42 may be made only in accordance with this section.
- “(2) The applicant, or any person or body whose resources are taken into account for the purposes of making a determination referred to in section 43(1), or both, may be required to make a repayment towards the cost of legal services. 35

- “(3) The total of the repayment required to be paid under a grant of legal aid made under section 42 must not exceed an amount that is fair and reasonable, having regard to—
- “(a) the resources of the applicant and the financial resources of those persons and bodies whose resources are so taken into account; and
- “(b) the likely cost of the proceedings. 5
- “(4) Every repayment required in accordance with this section under a grant of legal aid is recoverable in the same way as any other repayment required to be paid under this Act.” 10

28 Grounds for review

- (1) Section 54(2) is amended by repealing paragraph (c) and substituting the following paragraph:
- “(c) any amount payable by an aided person, whether as an interim repayment or repayment, under a grant of legal aid:” 15
- (2) Section 54 is amended by repealing subsection (4) and substituting the following subsections:
- “(4) A party who has applied to the Agency for payment of costs under **section 41** may apply to the Review Panel for a review of the Agency’s decision under **section 41** on the grounds that the decision is— 20
- “(a) manifestly unreasonable; or
- “(b) wrong in law.
- “(5) In this section, **decision** includes a failure or refusal to make a decision.” 25

29 Powers and duties of Convenor of Review Panel on receipt of application for review

Section 55A is amended by adding the following subsection:

- “(3) The Convenor may be a member of any team reviewing a decision.” 30

30 Establishment and membership of Legal Aid Review Panel

Section 62 is amended by adding the following subsections:

- “(8) The primary function of the Convenor of the Review Panel is to ensure that the Review Panel carries out its functions in accordance with this Act in an efficient and effective manner. 35

- “(9) A member continues in office despite the expiry of his or her term of office until—
- “(a) the member is reappointed; or
 - “(b) the member’s successor is appointed; or
 - “(c) the Attorney-General informs the member by written notice (with a copy to the Convenor of the Review Panel) that the member is not to be reappointed and no successor is to be appointed at that time; or
 - “(d) either subsection (6) or subsection (7) applies.”

New (majority)

30A New section 64A inserted

The following section is inserted after section 64:

“64A Liability of Review Panel

- “(1) The Review Panel and members, employees, and agents of the Review Panel are not under any criminal or civil liability in respect of—
- “(a) any act done or omitted in the course of the performance or exercise, or intended performance or exercise, of any of its functions, duties, or powers under this Act; or
 - “(b) any words spoken or written at, or in connection with, any review, determination, or direction to reconsider under this Act.
- “(2) This section does not exclude the liability of any person for anything done or omitted in bad faith.”

31 New section 68 substituted

Section 68 is repealed and the following section substituted:

“68 Listed providers to protect Agency’s interests in relation to charges and proceeds of proceedings

- “(1) This section applies to every person who provides legal services under a grant of legal aid.
- “(2) Every person to whom this section applies—
- “(a) must take all reasonable steps to protect the interests of the Agency under a charge in favour of the Agency, whether the charge—
 - “(i) is registered in accordance with a condition imposed under **section 15(3)**; or

- “(ii) arises by operation of section 32; and
- “(b) has a duty not to do or permit anything that would or might effect the transfer of property subject to a charge in favour of the Agency; and
- “(c) must advise the Agency if he or she is aware that the aided person has avoided, is avoiding, or is attempting to avoid making payments to the Agency from proceeds of proceedings. 5

Struck out (majority)

- “(3) The duty to advise the Agency under **subsection 2(c)** overrides any relationship of confidentiality between the person to whom this section applies and the aided person. 10

New (majority)

- “(3) For the purposes of **subsection (2)(c)**, an aided person is deemed to have waived any legal professional privilege that might otherwise prevent a person to whom this section applies from complying with **subsection (2)(c)**. 15

- “(4) If a person to whom this section applies fails to fulfil his or her duties under this section, the money that should have been paid to the Agency under a charge or from proceeds of proceedings, may be deducted from any money owing by the Agency to that person.” 20

32 New section 72A inserted

The following section is inserted after section 72:

“72A Temporary suspension of listing

- “(1) The Agency may temporarily suspend <an approval> <any 1 or more approvals> in a person’s listing if— 25
 - “(a) the person is charged with an offence or is subject to disciplinary procedures under the Law Practitioners Act 1982; and
 - “(b) the Agency considers that this will have an adverse effect on— 30
 - “(i) the interests of aided persons (whether generally or in a particular case); or
 - “(ii) the integrity of legal aid schemes generally.

- “(2) The Agency may temporarily suspend an approval under this section for a specified period of time, or until the outcome of the matter that the person is charged with or subject to.
- “(3) The effect of the temporary suspension of approval is that the person ceases to be approved to provide the relevant service, and the Agency is not obliged to pay for any services of that kind provided after the date on which the temporary suspension takes effect. 5
- “(4) The temporary suspension takes effect on the date given in a written notice to the person subject to the temporary suspension, which must be a date on or after the date on which the Agency reasonably considers the person will receive the notice. 10
- “(5) The written notice must specify the grounds for the temporary suspension. 15
- “(6) A person who receives a notice of temporary suspension may seek a review of that decision by the Agency, and is entitled to make submissions and be heard at any such review.
- “(7) If a review is requested, the Agency must conduct the review as soon as practicable and make a final decision.” 20

33 New section 73 substituted

Section 73 is repealed and the following section substituted:

“73 Cancellation of listing

- “(1) The Agency may cancel 1 or more of the approvals in a person’s listing on any of the following grounds: 25
- “(a) the person has been convicted of an offence under section 111 or section 112;
- “(b) the Agency is satisfied that the approval was given by mistake;
- “(c) the person, in relation to 1 or more approvals, does not meet the listing criteria for that approval, whether those criteria were adopted before or after the approval was given: 30
- “(d) the person is not providing<, or has not provided,> the service for which he or she is approved to a standard that is acceptable to the Agency: 35
- “(e) the person has filed for bankruptcy;
- “(f) the person has failed to comply with 1 or more of the conditions of approval imposed under section 69(2):

- “(g) the person has failed to comply with or fulfill requirements under any of section 66, 67, **68**, or 79:
- “(h) the person is convicted of an offence, or subject to an order made under section 106 or section 112 of the Law Practitioners Act 1982. 5
- “(2) The effect of the cancellation of approval is that the person ceases to be approved to provide the relevant service, and the Agency is not obliged to pay for any services of that kind provided after the date on which the cancellation takes effect.
- “(3) The cancellation takes effect on the date given in a written notice to the person subject to the cancellation, which must be a date on or after the date on which the Agency reasonably considers the person will receive the notice. 10
- “(4) The written notice must specify the grounds for the cancellation. 15
- “(5) A person who receives a notice of cancellation may seek a review of that decision by the Agency, and is entitled to make submissions and be heard at any such review.
- “(6) If a review is requested, the Agency must conduct the review as soon as practicable and make a final decision.” 20

New (majority)

33A New section 92A inserted

The following section is inserted after section 92:

“92A Agency to review payment of legal services

- “(1) The Agency must from time to time review its rates of payment in respect of legal services provided under this Act by listed providers on a contract for services. 25
- “(2) **Subsection (1)** does not limit any function or power conferred on the Agency under this Act.”

34 Annual report

Section 102(1)(c) is amended by omitting “contributions” and substituting “interim repayments”. 30

35 Disclosure of information

Section 109 is amended by repealing subsection (5) and substituting the following subsection:

- “(5) Despite subsection (2), a person may disclose to the Agency any communication between the aided person and his or her lawyer, or sent to or by the aided person or his or her lawyer (whether or not the communication is marked ‘confidential’ or ‘without prejudice’), if— 5
- “(a) the aided person’s grant of legal aid is in respect of a civil matter; and
- “(b) the purpose of the disclosure is to inform the Agency of matters relevant to the withdrawal or amendment of legal aid on the grounds set out in **section 26(2)(d)**.” 10

36 New section 109A inserted

The following section is inserted after section 109:

“109A Agency may require financial information

- “(1) The Agency may require an aided person or applicant for legal aid to provide up-to-date information about the person’s financial means if the Agency requires the information to make any decision under this Act. 15
- “(2) The Agency may seek verification from a third party of any information provided under this section, but must not seek verification until it has notified the aided person or applicant that it intends to do so.” 20

37 Misrepresentation, etc

Section 110 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) Every aided person ~~or applicant for legal aid~~ commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who— 25
- “(a) fails without reasonable excuse to comply with any provision of this Act, or of any regulation made under it, requiring the person to furnish information or answer questions or produce any document or thing; or 30
- “(b) knowingly provides false and misleading information, or knowingly answers any question in a false or misleading way; or
- “(c) intentionally avoids payment of the Agency’s interest in any proceeds of proceedings.” 35

38 New section 113 inserted

Section 113 is repealed and the following section substituted:

“113 Regulations

- “(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 5
 - “(a) determining the amount or amounts payable by an aided person (other than as a repayment under section 42) by—
 - “(i) prescribing the amount or amounts, or a method of calculating an amount or amounts, payable by an aided person as an interim repayment: 10
 - “(ii) prescribing the amount or amounts, based on income and capital, payable by an aided person as a repayment:
 - “(iii) prescribing a method of calculating an amount or amounts, based on income and capital, payable by an aided person as a repayment: 15
 - “(b) prescribing a method or methods for calculating what maximum grant, if any, should be set under a grant of legal aid <in respect of proceedings other than victims’ claims proceedings>: 20

New (majority)

- “(ba) prescribing for the purposes of section 20(4), the amount of the maximum grant to be specified for every grant of legal aid in respect of victims’ claims proceedings: 25
- “(c) determining whether a person is eligible for legal aid by—
 - “(i) prescribing maximum levels of income and disposable capital:
 - “(ii) prescribing a method of assessing financial means: 30
- “(d) prescribing allowances for use in calculating a person’s disposable capital:
- “(e) prescribing deductions that may be made from the cost of services for the purpose of determining the repayment payable by an aided person under a grant of legal aid: 35

- “(f) prescribing the manner in which applications for, and grants of, legal aid in respect of minors, and other people with special requirements, are to be dealt with:
- “(g) prescribing a class or classes of defendants to whom priority must be given under the duty solicitor scheme or for whom services may be limited: 5
- “(h) prescribing conditions relating to the delivery of services under any scheme:
- “(i) making provision, in respect of the calculation of the income, disposable capital, or capital of an applicant for legal aid, for all or any of the following: 10
- “(i) taking into account fluctuations of income:
- “(ii) determining the value of any property:
- “(iii) including in the resources of the applicant any property that has been disposed of: 15
- “(iv) excluding from the resources of the applicant any liabilities incurred by the applicant for no consideration, or for a grossly inadequate consideration:
- “(v) taking into account any benefit to which the applicant is entitled or which the applicant might receive in connection with property held on trust: 20
- “(j) prescribing matters relating to the way in which the Agency administers charges, including prescribing maximum rates of interest that may be charged: 25
- “(k) prescribing amounts or methods for calculating the cost of services:
- “(l) prescribing *<a maximum>* *<the>* rate of interest that may be charged for the purposes of **section 35A**:
- “(m) increasing, or prescribing a method for increasing, the maximum amount of income or disposable capital for the purposes of determining a person’s eligibility for legal aid: 30
- “(n) adjusting, or prescribing a method for adjusting, the maximum amount of repayments for the purposes of **section 17**: 35
- “(o) providing for any other matters contemplated by the Act, necessary for its administration, or necessary for giving it full effect.
- “(2) When prescribing amounts, or methods of calculating amounts, regulations made under this section may— 40

- “(a) distinguish between applicants for legal aid on any grounds, for example, the type of proceedings to which the application relates, or the level of income or disposable capital of the applicant; or
- “(b) distinguish between aided persons on any grounds, for example, the type of proceedings to which the grant relates, or the level of income, *<or>* disposable capital <or capital> of the aided person. 5
- “(3) When prescribing an amount or method of calculating the cost of services, regulations may distinguish between applicants for legal aid or aided persons on the basis of the contract held by the provider. 10

Struck out (majority)

- “(4) When prescribing maximum levels of income for the purpose of determining an applicant’s eligibility for legal aid, regulations may take into account the number of dependant children in a family. 15

New (majority)

- “(4) When prescribing maximum levels of income for the purpose of determining an applicant’s eligibility for legal aid or when prescribing the maximum amount of repayments payable by an aided person, regulations may take into account whether the applicant or aided person has— 20
 - “(a) a spouse or partner:
 - “(b) any dependent children, and the number of dependent children.
- “(5) If regulations made under **subsection (1)** prescribe maximum levels of income and disposable capital for the purpose of determining an applicant’s eligibility for legal aid, the limits so prescribed must be adjusted, by regulations made under **subsection (1)**, by an amount equal to the percentage movement referred to in **paragraph (a) or paragraph (b)**, as the case requires, if— 25
 - “(a) the total percentage increase in the movements in the quarterly all groups index number of the New Zealand Consumers Price Index from that applying on the date 30

that the Legal Services Amendment Act (No 2) 2005 comes into force is 5% or more:

- “(b) the total percentage increase in the movements in the quarterly all groups index number of the New Zealand Consumers Price Index from that applying on the date when the requirement to make the immediately preceding adjustment under this subsection arose is 5% or more. 5
- “(6) For the purposes of any adjustment required under **subsection (5)**, the amount of any increase must be rounded up to the nearest whole dollar amount, but any subsequent adjustment must be calculated on the amount of the increase without the rounding. 10
- “(7) Any adjustment required by **subsection (5)** contained in regulations made under **subsection (1)** takes effect on the first day of April following the making of those regulations.” 15

39 Legal aid granted under Legal Aid Act 1969

Section 116A is amended by repealing subsection (2) and substituting the following subsections:

- “(2) All charges created by or under the Legal Aid Act 1969 are vested in the Agency. 20
- “(3) Neither the Registrar-General of Land nor any other person charged with keeping any records or registers is obliged, solely by reason of this section, to change the name in those records or registers or in any document. 25
- “(4) It is sufficient proof in the absence of evidence to the contrary, that a charge is vested in the Agency if a person presents to a registrar or any other person a document purporting to be a charge or copy of a charge created by or under the Legal Aid Act 1969. 30
- “(5) A charge created by or under the Legal Aid Act 1969 must be treated as if it were a charge created by or under section 32 of this Act.
- “(6) The provisions of this Act, so far as they are applicable and with any necessary modifications, apply to the charge; and the Agency may, for the purposes of subsection (1),— 35
- “(a) transfer the charge in accordance with section 34; and
- “(b) enforce the charge in accordance with section 35; and

“(c) write off the amounts secured by the charge in accordance with **section 37.**”

Struck out

40 Repayments in respect of certain legal aid granted under former Act

Section 117A(4) is amended by omitting “contribution” and substituting “repayment”.

5

New

40 Repayments in respect of certain legal aid granted under former Act

Section 117A(4) is amended by adding “(as it read before the commencement of the Legal Services Amendment Act **(No 2) 2005**)”.

10

41 New Schedule 1 substituted

Schedule 1 is repealed and the **Schedule 1** set out in **Schedule 1** of this Act substituted.

42 New Schedule 4 added

The **Schedule 4** set out in **Schedule 2** of this Act is added.

15

**Part 2
Transitional provisions**

43 Applications for legal aid and grants of legal aid made before commencement of this Act

20

(1) In this section and **section 44**, **commencement date** means the commencement date of the Legal Services Amendment Act **(No 2) 2005**.

(2) The provisions of the Legal Services Amendment Act **(No 2) 2005** do not affect applications for legal aid or grants of legal aid made before the commencement date, except as provided in this section and **section 44**.

25

(3) **Sections 40 and 41** of the principal Act (as substituted by **section 26** of the Legal Services Amendment Act **(No 2) 2005**) apply to

- any proceeding for which legal aid has been granted on or after the commencement date.
- (4) **Section 116A(2)** of the principal Act (as substituted by **section 39** of the Legal Services Amendment Act (**No 2**) **2005**) applies to all charges created by or under the Legal Aid Act 1969. 5
- 44 Transitional provisions in relation to providers of legal services, etc**
- (1) **Section 68** of the principal Act (as substituted by **section 31** of the Legal Services Amendment Act (**No 2**) **2005**) applies to any person who on or after the commencement date is a provider of legal services under a grant of legal aid, regardless of whether the grant was made before, on, or after the commencement date. 10
- (2) **Section 72A** of the principal Act (as inserted by **section 32** of the Legal Services Amendment Act (**No 2**) **2005**) and **section 73** of the principal Act (as substituted by **section 33** of the Legal Services Amendment Act (**No 2**) **2005**) apply to any listed provider on or after the commencement date, regardless of whether he or she became a listed provider before, on, or after the commencement date. 15 20
-

s 41

Schedule 1
New Schedule 1 substituted in principal Act

s 4(1)

Schedule 1
Definition of income and disposable capital

- 1 Definitions** 5
- In this schedule, unless the context otherwise requires,—
- capital**, in relation to an applicant for legal aid, means that person’s total assets after deducting—
- (a) the amount of any debts secured against those assets; 10
and
 - (b) the amount of the actual debts of the person, other than those that are secured
- home** means the person’s principal place of residence
- partner** means, in relation to a person, the person’s civil union partner or de facto partner. 15
- 2 Meaning of income**
- (1) In relation to an applicant for legal aid, **income**—
- (a) means the person’s total gross income during the 12 months immediately before the application for legal aid, or during such other period of 12 months as the Agency considers appropriate in the circumstances; and 20
 - (b) has the meaning given to it in paragraphs (a) to (e) of the definition of income in section (3)(1) of the Social Security Act 1964; and
 - (c) includes a benefit payable under Part 1 of the Social Security Act 1964; but does not include— 25
 - (i) an orphan’s benefit payable under section 28 of the Social Security Act 1964; or
 - (ii) an unsupported child’s benefit payable under section 29 of that Act; or 30
 - (iii) a child disability allowance payable under section 39A of that Act; or
 - (iv) an emergency benefit payable under section 61 of that Act; or
 - (v) an accommodation supplement payable under section 61EA of that Act; or 35
 - (vi) a special benefit fixed under section 61G of that Act; or

Schedule 1—continued

- (vii) a disability allowance payable under section 69C of that Act; and
- (d) excludes any payment payable under a welfare programme approved by the Minister under section 124(1)(d) of the Social Security Act 1964; but 5
- (e) includes any tax credit or amount received under sub-part KD of the Income Tax Act 2004 or sub-part KD of the Income Tax Act 1994 or under Part ~~((1))~~ 11A of the Income Tax Act 1976.

New (majority)

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| (2) | Subclause (1) is subject to clauses 4 and 5 . | 10 |
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3 Meaning of disposable capital

- (1) In relation to an applicant for legal aid, **disposable capital** means that person's total assets after deducting the amount of any debts secured against those assets and after deducting,—
- (a) if the person has an interest in a home, the amount of equity in the property set by regulations made under this Act: 15
- (b) if the person has an interest in a motor vehicle used principally as that person's means of transport for domestic purposes, the amount of the value of that interest: 20
- (c) the amount of the value of the person's household furniture, household appliances, personal clothing, and tools of trade:
- (d) the amount of the contingent liabilities of the person that may mature within the next 6 months: 25
- (e) the amount of the actual debts of the person, other than those that are secured and have been taken into account in determining the amount of the person's assets:
- (f) the value of the subject matter of the proceedings unless the Agency determines a proportion of that value that should be included in the assessment of the person's total assets. 30
- (2) This clause is subject to **clauses 4 and 5**.

Schedule 1—continued

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

Struck out (majority)

- (1) Except as otherwise provided in any regulations made under this Act, any resources of a person’s spouse or partner must be treated as that person’s resources if they are living together, unless they have contrary interests in the matter to which the proceedings relate. 5

New (majority)

- (1) Any resources of a person’s spouse or partner must be treated as that person’s resources unless—
- (a) the person is living apart from his or her spouse or partner; or 10
 - (b) the person and his or her spouse or partner have contrary interests in the matter to which the proceedings relate; or
 - (c) regulations made under this Act provide otherwise.
- (2) Subject to **subclauses (3) and (5)**, any resources of the parents of a minor who is under 16 years of age must be treated as that minor’s resources, unless the minor and either of his or her parents have contrary interests in the matter to which the proceedings relate. 15
- (3) Where an application for legal aid for a civil matter is made by or on behalf of a person under 16 years of age, the Agency may exclude from the applicant’s resources the resources of a parent of the applicant if— 20
- (a) that parent is living apart from, or does not have responsibility for the day-to-day care of, the applicant; or 25
 - (b) the applicant is supporting himself or herself without financial assistance from that parent.
- (4) Where an application for legal aid for a civil matter is made by a minor aged 16 years or over, the Agency may treat the resources of the following persons as resources of the applicant: 30
- (a) any person who, under any agreement or court order, is liable wholly or partially to maintain the applicant; or

Schedule 1—*continued*

- (b) any parent, foster parent, or step-parent with whom the applicant is living.
- (5) Where an application for legal aid for a civil matter is made by a minor, the Agency may include in his or her resources any sum paid or payable, under any agreement or court order, to any person for the purpose of maintaining the minor. 5
- (6) Without limiting the ways in which persons may have a contrary interest in a matter, person A and person B have a **contrary interest** in a matter if—
- (a) person A applies for or is granted legal aid in connection with proceedings against person B under the Domestic Violence Act 1995; and 10
- (b) either—
- (i) person A is a minor and person B is person A's parent; or 15
- (ii) person A is the spouse or partner of person B.
- 5 Resources relating to Maori land**
- (1) In this clause, **applicant** means—
- (a) an applicant for legal aid for a civil matter; and
- (b) every other person whose income or disposable capital has to be assessed for the purposes of deciding whether, and on what terms, legal aid should be granted under the application. 20
- (2) The income of the applicant includes any rent derived from Maori land or interests in Maori land. 25
- (3) The disposable capital of the applicant includes Maori land and any interests in Maori land unless—
- (a) the application is made in respect of proceedings in the Waitangi Tribunal; or
- (b) in the circumstances of the case, the Agency considers that it would be inequitable to include all or part of the land or interest. 30
- (4) For the purposes of this clause **Maori land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993.
- (5) This clause operates despite anything in **clauses 2, 3, and 4**, or anything in regulations made under this Act. 35

Schedule 1—*continued***6 Resources of representative, fiduciary, etc**

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

- (a) the applicant's personal resources must not be taken into account when assessing income or disposable capital; but 5
 - (b) the Agency may have regard to the value of the property or estate, or the amount of the fund, out of which the applicant is entitled to be indemnified, and to the resources of the persons (if any) who are beneficially interested. 10
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s 42

Schedule 2

New Schedule 4 of principal Act

s 9(5)

Schedule 4

Specified enactments

Adoption Act 1955	5
Adult Adoption Information Act 1985	
Alcoholism and Drug Addiction Act 1966	
Care of Children Act 2004	
Child Support Act 1991	10
Children, Young Persons, and Their Families Act 1989 (other than Parts 4 and 5 and sections 351 to 360)	
Domestic Violence Act 1995	
Family Proceedings Act 1980 (other than Parts 6 to 8)	
Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003	15
Mental Health (Compulsory Assessment and Treatment) Act 1992	
Protection of Personal and Property Rights Act 1988	

Legislative history

10 May 2005	Introduction (Bill 265-1)
17 May 2005	First reading and referral to Justice and Electoral Committee
27 February 2006	Reported from Justice and Electoral Committee (Bill 265-2)
14 March 2006	Second reading
21, 22, 28 March 2006	Committee of the whole House (Bill 265-3)

