

**Reprint  
as at 1 July 2011**



**Legal Services Act 2000**

Public Act    2000 No 42  
Date of assent    14 October 2000  
Commencement    see section 2

Legal Services Act 2000: repealed, on 1 July 2011, by section 145 of the Legal Services Act 2011 (2011 No 4).

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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

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**1 Title**

This Act is the Legal Services Act 2000.

**2 Commencement**

- (1) This Act (except section 116) comes into force on 1 February 2001.
- (2) Section 116 comes into force on the day after the date on which this Act receives the Royal assent.

**Part 1**

**Preliminary provisions**

**3 Purpose of Act**

The purpose of this Act is to promote access to justice by—

- (a) providing a legal aid scheme that assists people who have insufficient means to pay for legal services to nonetheless have access to them; and
- (b) providing other schemes of legal assistance; and
- (c) supporting community legal services by funding community law centres, education, and research.

**4 Interpretation**

- (1) In this Act, unless the context otherwise requires,—  
**Agency** means the Legal Services Agency established by section 91

**aided person—**

- (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- (b) includes a person whose grant of legal aid has been withdrawn under section 27

**approved scheme** means a scheme (other than the legal aid, duty solicitor, or PDLA schemes) that is administered by the Agency and approved by the Minister under a purchase agreement for the provision of particular legal services

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

**Board** means the Board of the Agency referred to in section 94

**capital**, in relation to a person, means that person's capital as described in Schedule 1

**civil proceedings** includes—

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

**community legal services** means services provided or funded under this Act other than through a scheme

**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
- (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

**criminal proceedings** includes—

- (a) proceedings on an application made under any of sections 54, 68, or 121 of the Sentencing Act 2002;
- (b) proceedings before a District Court Judge under section 88 of the Summary Proceedings Act 1957;
- (c) proceedings for contempt under section 84O of the District Courts Act 1947;
- (d) proceedings before a District Court Judge under the Extradition Act 1999 relating to the surrender to a foreign country of the person to whom the proceedings relate

**disposable capital**, in relation to a person, means that person's disposable capital as described in Schedule 1

**duty solicitor scheme** means the scheme of that name administered by the Agency under section 46

**former Act** means the Legal Services Act 1991

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

**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

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

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

**legal aid scheme** means the scheme of that name administered by the Agency under Part 2

**legal service list** means the list of people approved by the Agency to provide legal services under 1 or more schemes

**legal services,—**

- (a) in relation to legal aid, means legal advice and representation; and includes assistance—
  - (i) with resolving disputes other than by legal proceedings; and
  - (ii) with taking steps preliminary or incidental to any proceedings; and
  - (iii) in arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings:
- (b) in relation to a community law centre, includes—
  - (i) legal advice and representation (including the kinds of assistance described in subparagraphs (i) to (iii) of paragraph (a)); and
  - (ii) the provision of legal information and law-related education; and
  - (iii) undertaking law-reform and advocacy work on behalf of the community it serves:
- (c) in relation to anything else, includes all the things specified in paragraphs (a) and (b), unless otherwise specified

**Legal Services Board** means the Legal Services Board established under section 94 of the former Act

**listed provider**, in relation to the provision of particular services under a scheme, means a natural person who is listed as approved to provide those services

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

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

**Minister** means the Minister of Justice

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

**output agreement** has the same meaning as in section 10 of the Crown Entities Act 2004

**PDLA scheme** means the Police Detention Legal Assistance scheme administered by the Agency under section 49

**prescribed manner** means the manner prescribed by the Agency

**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

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

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

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

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

**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

**Review Panel** means the Legal Aid Review Panel established under section 62

**scheme** means any 1 or more of the following:

- (a) the legal aid scheme;
- (b) the duty solicitor scheme;
- (c) the PDLA scheme;
- (d) an approved scheme

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

**transition date** means 1 February 2001

**victim**—

- (a) means—

- (i) a person against whom an offence is committed by another person; and
  - (ii) a person who, through, or by means of, an offence committed by another person, suffers physical injury or loss of, or damage to, property; and
  - (iii) a parent or legal guardian of a child, or of a young person, who falls within subparagraph (i) or (ii), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and
  - (iv) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and
- (b) despite paragraph (a), if an offence is committed by a person, does not include another person charged (whether as a principal or party or accessory after the fact or otherwise) with the commission of, or convicted or found guilty of, or who pleads guilty to,—
- (i) that offence; or
  - (ii) an offence relating to the same incident or series of incidents as that crime or offence

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

- (2) In this Act, a reference to an application “by” a person, or a grant “to” a person includes a reference to an application made by one person on behalf of another, or a grant made in respect of a person other than the person to whom the grant is made.
- (3) In this Act, and in any regulations made under it, references to such things as fees, charges, disbursements, grants, and rates, are references to those things GST inclusive.
- (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.

Compare: 1991 No 71 ss 2, 47, 49A(1), 95(2), 155

Section 4(1) **aided person**: substituted, on 1 March 2007, by section 4(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **capital**: inserted, on 1 March 2007, by section 4(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **civil proceedings** paragraph (a): amended, on 1 April 2007, by section 127(4)(a) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Section 4(1) **civil proceedings** paragraph (a): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 4(1) **civil proceedings** paragraph (a): amended, on 27 November 2002, by section 64(1) of the Weathertight Homes Resolution Services Act 2002 (2002 No 47).

Section 4(1) **civil proceedings** paragraph (a): amended, on 1 February 2002, by section 64(2) of the Property (Relationships) Amendment Act 2001 (2001 No 5).

Section 4(1) **contribution**: repealed, on 1 March 2007, by section 4(1) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **cost of services**: inserted, on 1 March 2007, by section 4(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **criminal proceedings** paragraph (a): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 4(1) **disposable income**: repealed, on 1 March 2007, by section 4(1) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **income**: inserted, on 1 March 2007, by section 4(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **interim repayment**: inserted, on 1 March 2007, by section 4(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **lawyer**: substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 4(1) **offender**: inserted, on 17 February 2010, by section 4(1) of the Legal Services Amendment Act 2009 (2009 No 69).

Section 4(1) **output agreement**: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4(1) **prescribed repayment amount**: inserted, on 1 March 2007, by section 4(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **proposed care recipient**: inserted, on 1 March 2007, by section 4(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **proposed patient**: inserted, on 1 March 2007, by section 4(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **purchase agreement**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 4(1) **repayment**: inserted, on 1 March 2007, by section 4(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 4(1) **Special Fund**: substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 4(1) **transition date**: amended, on 4 June 2005, by section 66(1) of the Prisoners' and Victims' Claims Act 2005 (2005 No 74).

Section 4(1) **victim**: inserted, on 17 February 2010, by section 4(1) of the Legal Services Amendment Act 2009 (2009 No 69).

Section 4(1) **victims' claims proceedings**: added, on 4 June 2005, by section 66(2) of the Prisoners' and Victims' Claims Act 2005 (2005 No 74).

Section 4(4): added, on 17 February 2010, by section 4(2) of the Legal Services Amendment Act 2009 (2009 No 69).

## 5 Act binds the Crown

This Act binds the Crown.

## Part 2

### Legal aid and other schemes

#### *When legal aid may be granted*

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

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

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

Compare: 1991 No 71 s 4

Section 6(a): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 6(c): substituted, on 30 June 2002, by section 125 of the Parole Act 2002 (2002 No 10).

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

- (1) Legal aid may be granted in respect of the following civil matters:
- (a) civil proceedings in a District Court or a Family Court;
  - (b) civil proceedings in the High Court, the Court of Appeal, or the Supreme Court;
  - (c) appeals to the Judicial Committee of the Privy Council in civil proceedings in any case where—
    - (i) the applicant has succeeded in the Court of Appeal and is the respondent in the appeal to the Privy Council, if the grant of aid is approved by the Minister; or
    - (ii) the Attorney-General certifies that a question of law of exceptional public importance is involved and that the grant of aid is desirable in the public interest;
  - (d) proceedings commenced by way of application in a Youth Court under Part 7 of the Children, Young Persons, and Their Families Act 1989 or in respect of any review of any determination of, or any order made in, a Youth Court in any such proceedings;
  - (e) in any case where the Agency considers that the case is one that requires legal representation (having regard to the nature of the proceedings and to the applicant's personal interest) and considers that the applicant would suffer substantial hardship if aid were not granted, proceedings in—
    - (i) the Maori Land Court; or
    - (ii) the Maori Appellate Court; or
    - (iii) the Employment Court; or
    - (iv) the Employment Relations Authority; or
    - (v) any administrative tribunal or judicial authority (not being a tribunal or an authority in respect of any decision from which an appeal lies to any of

the bodies referred to in any of paragraphs (f) to (j):

- (f) proceedings before the Waitangi Tribunal:
- (g) proceedings before the Social Security Appeal Authority:
- (h) proceedings before the Tenancy Tribunal:
- (i) proceedings before a body established under section 63(1)(a)(i) of the Housing Restructuring and Tenancy Matters Act 1992 to hear appeals under section 62 of that Act:
- (j) proceedings before the Immigration and Protection Tribunal, as established by the Immigration Act 2009, in respect of appeals against decisions to decline to grant recognition as a refugee or a protected person, or decisions to cease to recognise a person as a refugee or a protected person, as provided in sections 194(1) and 195 of that Act, or against liability for deportation arising under section 162 of that Act:
- (k) the processing, under Part 5 of the Immigration Act 2009, of any claim for recognition as a refugee or a protected person:
- (l) any proceedings before the District Court or High Court following an application made under section 316 or 324 of the Immigration Act 2009:
- (m) any appeal or review proceedings (as defined in section 4 of the Immigration Act 2009) in respect of proceedings or matters to which paragraph (j) or (k) applies:
- (ma) any proceedings or application under or in relation to the Immigration Act 1987 for which legal aid could have been granted under any of paragraphs (j), (k), (l), and (m) of this subsection as in force before their repeal by the Immigration Act 2009:
- (n) all applications, submissions, and appeals under the Resource Management Act 1991 or to the Environment Court under any other Act:
- (o) all applications, submissions, and appeals to any Council or body in any case where an appeal in relation to its decision lies to the Environment Court:



- (p) proceedings before the tribunal under the Weathertight Homes Resolution Services Act 2006:
  - (q) proceedings before a Tribunal under subpart 2 of Part 2 of the Prisoners' and Victims' Claims Act 2005 in respect of 1 or more victims' claims under that subpart.
- (1A) To avoid any doubt, subsection (1)(e)(v) applies, without limitation, to the following proceedings:
- (a) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; and
  - (b) a hearing of the New Zealand Parole Board (other than one in a proceeding specified in section 6(c)(i)) that concerns an offender and is a hearing at which a victim may appear as of right or with the Board's leave.
- (2) Paragraphs (n) and (o) of subsection (1) do not restrict any other paragraph of that subsection.
- (3) Despite subsection (1), but subject to subsection (4)(e), legal aid is not available in proceedings under Part 4 of the Family Proceedings Act 1980 (which relates to proceedings relating to the status of marriage) unless the Agency is of the opinion—
- (a) that the unusual complexity of the case requires that the applicant be legally represented; or
  - (b) that the applicant would suffer substantial hardship if aid were not granted.
- (4) Despite subsection (1), legal aid is not available in any of the following proceedings:
- (a) relator actions:
  - (b) election petitions under the Electoral Act 1993:
  - (c) petitions for inquiry under the Local Electoral Act 2001:
  - (d) proceedings incidental to any proceedings mentioned in any of paragraphs (a) to (c):
  - (e) proceedings under section 37 of the Family Proceedings Act 1980 (which relates to dissolutions of marriage), or appeals in proceedings under that section:
  - (f) any appeal to the Immigration and Protection Tribunal against a decision concerning a residence class visa under section 187 of the Immigration Act 2009 (or any appeal to the Residence Appeal Authority under section 18C of the Immigration Act 1987):

- (g) any appeal to the Immigration and Protection Tribunal on humanitarian grounds against liability for deportation by a person liable for deportation under section 154 of the Immigration Act 2009 (or any appeal to the Removal Review Authority under Part 2 of the Immigration Act 1987):
- (h) proceedings before a Commission of Inquiry under the Commissions of Inquiry Act 1908 (other than a Commission of Inquiry established or appointed by or under another enactment but deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908).

Compare: 1991 No 71 s 19

Section 7(1)(b): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 7(1)(i): amended, on 1 July 2006, by section 5(2)(e) of the Housing Restructuring and Tenancy Matters (Information Matching) Amendment Act 2006 (2006 No 34).

Section 7(1)(j): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 7(1)(k): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 7(1)(l): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 7(1)(m): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 7(1)(ma): inserted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 7(1)(p): added, on 27 November 2002, by section 64(2) of the Weather-tight Homes Resolution Services Act 2002 (2002 No 47).

Section 7(1)(p): amended, on 1 April 2007, by section 127(4)(b) of the Weather-tight Homes Resolution Services Act 2006 (2006 No 84).

Section 7(1)(p): amended, on 1 April 2007, by section 127(4)(c) of the Weather-tight Homes Resolution Services Act 2006 (2006 No 84).

Section 7(1)(q): added, on 4 June 2005, by section 67 of the Prisoners' and Victims' Claims Act 2005 (2005 No 74).

Section 7(1A): inserted, on 17 February 2010, by section 5 of the Legal Services Amendment Act 2009 (2009 No 69).

Section 7(4)(c): amended, on 1 July 2001, by section 151 of the Local Electoral Act 2001 (2001 No 35).

Section 7(4)(f): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 7(4)(g): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 7(4)(h): added, on 1 March 2007, by section 5(2) of the Legal Services Amendment Act 2006 (2006 No 5).

- 8 When legal aid may be granted: criminal matters**
- (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
  - (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.
- (2) When considering whether or not the interests of justice require that the applicant be granted legal aid, the Agency must have regard to—
- (a) whether the applicant has any previous conviction; and
  - (b) whether the applicant is charged with or convicted of an offence punishable by imprisonment; and
  - (c) whether there is a real likelihood that the applicant, if convicted, will be sentenced to imprisonment; and
  - (d) whether the proceedings involve a substantial question of law; and
  - (e) whether there are complex factual, legal, or evidential matters that require the determination of a court; and
  - (f) whether the applicant is able to understand the proceedings or present his or her own case, whether orally or in writing; and
  - (g) in any proceeding to which section 6(c) applies, the consequences for the applicant if legal aid is not granted; and
  - (h) in respect of an appeal, the grounds of the appeal.
- (3) 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.

- (4) 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.
- (5) Subsection (1)(c)(i) does not apply in respect of—
  - (a) an appeal; or
  - (b) a proceeding to which section 6(c) applies.
- (6) 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.

Section 8: substituted, on 1 March 2007, by section 6 of the Legal Services Amendment Act 2006 (2006 No 5).

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

- (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
  - (b) a trustee corporation (as defined in section 2(1) of the Administration Act 1969) that applies for legal aid in connection with proceedings in which it is concerned in a representative, fiduciary, or official capacity.
- (2) The Agency must refuse to grant legal aid to an applicant whose income 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—
  - (a) the likely cost of 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.
- (4) The Agency may refuse to grant legal aid to an applicant in any of the following circumstances:
- (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 prescribed repayment amount will exceed the likely cost of the proceedings for which legal aid is sought;
  - (c) the applicant is not resident in New Zealand and the Agency considers that the proceedings might reasonably be brought in a jurisdiction other than New Zealand;
  - (d) in the case of original proceedings,—
    - (i) the applicant's prospects of success are not sufficient to justify the grant of legal aid; or
    - (ii) the grant of legal aid is not justified, having regard to the nature of the proceedings and the applicant's interest in them (financial or otherwise), in relation to the likely cost of the proceedings; or
    - (iii) for any other cause where it appears unreasonable or undesirable that the applicant should receive legal aid in the particular circumstances of the case;
  - (e) in the case of an appeal (whether or not in respect of proceedings in which the applicant has received legal aid), the Agency considers that for any reason the grant of legal aid or further legal aid is not justified.
- (5) The Agency may refuse to grant legal aid to an applicant in respect of any original proceeding under an enactment specified in Schedule 4, if the Agency considers that the grant of legal aid is not justified.
- (6) In determining under subsection (5) whether a grant of legal aid is not justified, the 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.
- (8) Subsections (2) and (4)(a) and (b) do not apply to—
  - (a) applications for legal aid in respect of victims' claims proceedings; or
  - (b) applications for legal aid by a victim in respect of—
    - (i) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; or
    - (ii) a hearing of the New Zealand Parole Board (other than one in a proceeding specified in section 6(c)(i)) that concerns an offender and is a hearing at which the victim may appear as of right or with the Board's leave; or
  - (c) applications for legal aid by a person of a class specified in regulations as exempted from the application of 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).
- (9) 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.
- (10) Subsection (4)(d)(i) does not apply to original proceedings under an enactment specified in Schedule 4.
- (11) The Agency may grant legal aid to an applicant in respect of a civil proceeding under the Criminal Proceeds (Recovery) Act

2009 if the Agency considers that the interests of justice require that the applicant be granted legal aid.

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

Section 9: substituted, on 1 March 2007, by section 6 of the Legal Services Amendment Act 2006 (2006 No 5).

Section 9(8): substituted, on 17 February 2010, by section 6 of the Legal Services Amendment Act 2009 (2009 No 69).

Section 9(11): added, on 1 December 2009, by section 209 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 9(12): added, on 1 December 2009, by section 209 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Section 9(13): added, on 1 December 2009, by section 209 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

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

- (1) Subject to subsection (2), the Agency may not grant legal aid in respect of—
- (a) proceedings involving a decision under the Immigration Act 2009 in relation to a person who—
    - (i) is unlawfully in New Zealand in terms of that Act; or
    - (ii) is lawfully in New Zealand only by being the holder of a temporary entry class visa granted under that Act; or
    - (iii) is not in New Zealand and—
      - (A) is not a New Zealand citizen; or
      - (B) does not hold a residence class visa granted under that Act:

- (b) proceedings involving a decision or matter under the Immigration Act 1987 in relation to a person who—
  - (i) was unlawfully in New Zealand in terms of that Act; or
  - (ii) not having been granted legal aid for the purpose of any particular proceedings in New Zealand before the person arrived in New Zealand, was lawfully in New Zealand only by virtue of being the holder of a temporary permit or a limited purposes permit.
- (2) Subsection (1) does not apply in respect of—
  - (a) proceedings referred to in subsection (1)(b) for which a person was granted legal aid before the date fixed under section 2(1) of the Immigration Act 2009 for the coming into force of that Act; or
  - (b) proceedings specified in section 7(1)(j) to (ma) of this Act.
- (3) The Agency must refuse to grant legal aid to an applicant who applies for legal aid in connection with a civil proceeding in which he or she is concerned in a representative, fiduciary, or official capacity, unless it appears to the Agency that,—
  - (a) if proceedings were brought, the court would be likely to order that the cost of the proceedings be paid out of any property, estate, or fund; and
  - (b) if that happened, the property, estate, or fund would be diminished or extinguished by the order and any person beneficially interested would suffer hardship as a result.
- (4) If an applicant applies for legal aid in connection with a matter in which numerous persons have the same interest, and the rules of court permit the applicant to sue or be sued on behalf of all those persons, then the Agency must refuse to grant legal aid if it is satisfied that—
  - (a) the refusal of legal aid to the applicant would not seriously prejudice the rights of the applicant; or
  - (b) it would be proper for the other persons having the same interest to pay for the proceedings.
- (5) If an applicant has the right, according to the rules of court, to be joined with others as plaintiff in 1 action because a common question of law or fact arises, then the Agency may grant legal



aid to the applicant that is limited to the proceedings necessary to preserve the applicant's right to relief.

- (6) In this section, **rules of court** includes the rules governing the procedure of any court, tribunal, authority, or other body before whom the proceedings are heard.

Compare: 1991 No 71 ss 28(3), 70(1), 71

Section 10(1): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 10(2): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

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

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

Compare: 1991 No 71 s 88

### *Application and grant*

## 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
  - (c) must, subject to subsection (2), be made before the final disposition.
- (2) An application for a grant of legal aid may be made after the final disposition only if—
- (a) the Agency receives the application within 15 working days from the date of the final disposition; and
  - (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

- (ii) the applicant and the listed provider took all reasonable steps to apply before the final disposition.
- (3) In this section, **final disposition** means the final disposition of the matter to which the application relates, by a court, tribunal, or any other means.

Section 12: substituted, on 1 March 2007, by section 8 of the Legal Services Amendment Act 2006 (2006 No 5).

### 13 Special provisions relating to minors and mentally disordered persons

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

Compare: 1991 No 71 ss 64–66, 68

Section 13(1)(a): amended, on 1 March 2007, by section 9(1) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 13(4): amended, on 1 March 2007, by section 9(2) of the Legal Services Amendment Act 2006 (2006 No 5).

**14 Decision on application for legal aid**

- (1) On an application for legal aid, the Agency may, in respect of the whole or any part of the proceedings or appeal,—
  - (a) grant legal aid to the applicant; or
  - (b) grant legal aid on an interim basis pending further consideration of the application; or
  - (c) request further information from the applicant, the proposed lead provider, or both; or
  - (d) decline the application.
- (2) When granting legal aid (other than on an interim basis), the Agency—
  - (a) must specify the conditions, as described in section 15, attaching to the grant; and
  - (b) must identify the lead provider; and
  - (c) may specify a maximum grant.
- (3) This section does not apply to applications under section 42 for legal aid in respect of certain proceedings before the Waitangi Tribunal.

Compare: 1991 No 71 ss 7, 11(2), 17, 25, 33

Section 14(2)(b): amended, on 1 March 2007, by section 10 of the Legal Services Amendment Act 2006 (2006 No 5).

**15 Conditions on grant of legal aid**

- (1) A grant of legal aid may be subject to a condition that the aided person must pay to the 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 registered in favour of the Agency, regardless of whether the

- aided person has complied with any condition imposed under subsection (3).
- (5) Subsection (1), the provisions of subsection (3) relating to a charge as security for payment of an interim repayment required by a condition referred to in subsection (1), and subsection (4)—
- (a) do not apply to the maximum grant under section 20(4) of legal aid in respect of victims' claims proceedings; but
  - (b) apply to an amendment under section 24(4) of the maximum grant under section 20(4) of legal aid in respect of proceedings of that kind.
- (6) This section does not apply to—
- (a) applications for legal aid under section 42 in respect of certain proceedings before the Waitangi Tribunal; or
  - (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; or
  - (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)) 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.

Section 15: substituted, on 1 March 2007, by section 11 of the Legal Services Amendment Act 2006 (2006 No 5).

Section 15(6)(c): amended, on 17 February 2010, by section 7 of the Legal Services Amendment Act 2009 (2009 No 69).

Section 15(6)(d): added, on 17 February 2010, by section 7 of the Legal Services Amendment Act 2009 (2009 No 69).

Section 15(6)(e): added, on 17 February 2010, by section 7 of the Legal Services Amendment Act 2009 (2009 No 69).

Section 15(6)(f): added, on 17 February 2010, by section 7 of the Legal Services Amendment Act 2009 (2009 No 69).

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

- (1) In this section, **person A** means a person who is a party to proceedings (which includes appeals) that in any way relate to, or arise out of, an application by or on behalf of, or a grant in favour of, the person for a protection order under Part 2, or an order relating to property under Part 3, of the Domestic Violence Act 1995.
- (2) A grant of legal aid made to person A is not subject, and may not be made subject, to any of the conditions referred to in subsections (1), (2), or (3) of section 15, unless subsection (3) or subsection (4) of this section applies.
- (3) The Agency may impose any of the conditions in subsections (1), (2), or (3) of section 15 on a grant of legal aid made to person A if the Agency considers there are exceptional circumstances that justify the imposition of 1 or more of those conditions.
- (4) If a grant of legal aid to person A is in respect of proceedings that involve matters in addition to proceedings under the Domestic Violence Act 1995, then the Agency may impose conditions on the part of the grant that relates to those additional matters.
- (5) If the Agency proposes to impose conditions under subsection (4), it must—
  - (a) consider any representations by person A concerning the proportion of the grant that should not be subject to conditions; and
  - (b) determine what proportion of the grant is subject to conditions, and what those conditions are; and

- (c) advise person A of its decision, and explain how it decided what proportion of the grant should be subject to conditions.

Compare: 1991 No 71 ss 49A, 49B

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

Section 17: substituted, on 1 March 2007, by section 12 of the Legal Services Amendment Act 2006 (2006 No 5).

### **18 Amount of repayment payable**

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

Section 18: substituted, on 1 March 2007, by section 12 of the Legal Services Amendment Act 2006 (2006 No 5).

## 19 Lead providers

If more than 1 listed provider provides services under a grant of legal aid, any obligation of the Agency to pay or to communicate with a person providing services under the grant is owed only to the lead provider, and not to any other provider.

Compare: 1991 No 71 s 17

## 20 Maximum grant

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

Compare: 1991 No 71 ss 11, 22(3), 35

Section 20(4): added, on 4 June 2005, by section 70 of the Prisoners' and Victims' Claims Act 2005 (2005 No 74).

*After legal aid is granted***21 Lead provider in civil proceedings to notify other parties**

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

Compare: SR 1991/293 r 34

**22 Agency to be notified of change in circumstances**

- (1) An aided person (and any person acting for an aided person as a lawyer, next friend, guardian *ad litem*, or in any other capacity) must notify the 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).
- (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.
- (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.
- (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).

Section 22: substituted, on 1 March 2007, by section 13 of the Legal Services Amendment Act 2006 (2006 No 5).

### **23 Agency to keep aided person informed**

- (1) The Agency must give notice to an aided person of the conditions of his or her grant of legal aid—
  - (a) when the grant is first made; and
  - (b) whenever the aided person asks for such a notice; and
  - (c) whenever any material change is made to the conditions; and
  - (d) when the repayment payable (as determined under section 18) is settled by the Agency; and
  - (e) when an amendment is made to the maximum grant of legal aid.
- (2) Every notice under subsection (1) must include—
  - (a) a statement of any amounts currently owing by the aided person, whether as an interim repayment or a repayment; and
  - (b) details of any charges held, or to be taken, by the Agency over property of the aided person; and
  - (c) advice to the person about how to seek—
    - (i) a reconsideration of the Agency's decision, under section 29; and
    - (ii) an examination of the cost of services, under section 38; and
    - (iii) a review of the Agency's decision, under section 54.

Compare: 1991 No 71 s 81

Section 23(1)(d): substituted, on 1 March 2007, by section 14(1) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 23(1)(e): added, on 1 March 2007, by section 14(1) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 23(2)(a): substituted, on 1 March 2007, by section 14(2) of the Legal Services Amendment Act 2006 (2006 No 5).

### **23A Private mediation**

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

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

Section 23A: inserted, on 1 March 2007, by section 15 of the Legal Services Amendment Act 2006 (2006 No 5).

#### **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
  - (b) must be made in the prescribed manner to the Agency; and
  - (c) must, subject to subsection (2), be made before the final disposition.
- (2) An application for an amendment to a grant of legal aid may be made after the final disposition only if—
- (a) the Agency receives the application within 15 working days from the date of the final disposition; and
  - (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
    - (ii) the applicant and the listed provider took all reasonable steps to apply before the final disposition.
- (3) Following an application for amendment to a grant of legal aid, the Agency may confirm the grant or amend it in any manner consistent with this Act and any regulations made under it.
- (4) 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) applied to his or her application for legal aid in respect of those proceedings, be granted legal aid.

- (5) The Agency may, in either or both of the following circumstances, refuse to amend under subsection (4) the maximum grant under section 20(4) of legal aid in respect of victims' claims proceedings:
- (a) the Agency is unable to obtain full information concerning the applicant's financial affairs, because of the default or failure to the applicant;
  - (b) if, in the opinion of the Agency, the prescribed repayment amount will exceed the likely cost of the proceedings.
- (6) In this section, **final disposition** means the final disposition of the matter to which the application relates, by a court, tribunal, or any other means.

Section 24: substituted, on 1 March 2007, by section 16 of the Legal Services Amendment Act 2006 (2006 No 5).

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

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
  - (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
- (b) amend the conditions on a grant of legal aid (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.

Section 25: substituted, on 1 March 2007, by section 17 of the Legal Services Amendment Act 2006 (2006 No 5).

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

- (1) The Agency must withdraw legal aid granted in respect of a civil matter in any of the following circumstances:
  - (a) the grant of legal aid includes a condition that the aided person pay an interim repayment, and payment of that interim repayment is—
    - (i) more than 21 days in arrears; or
    - (ii) unpaid by any date to which the Agency has extended the time for paying the interim repayment:
  - (b) the grant of legal aid is subject to a condition that the aided person authorises a charge to be registered over specified property, and the aided person has not so authorised the charge within 15 working days of the date on which the Agency asked the person to do so:
  - (c) the Agency becomes aware that the aided person was not entitled to legal aid because subsection (1) of section 10 applies, and subsection (2) of that section does not.
- (2) In relation to a civil matter, the Agency may at any time withdraw legal aid from, or amend a grant of legal aid to, an aided person in any of the following circumstances:
  - (a) the aided person is no longer a person who would be entitled to that grant of legal aid, by virtue of any of the provisions of sections 9, 10, or 11:
  - (b) the Agency is satisfied that the proceedings in respect of which legal aid was granted have been disposed of:
  - (c) the Agency is satisfied that the aided person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Agency, or has required unreasonably that the proceedings be continued:
  - (d) the Agency considers that the aided person no longer has reasonable grounds for taking, defending, or being a party to the proceedings, or that it is unreasonable or undesirable in the particular circumstances for the person to continue to receive legal aid:
  - (e) the Agency is satisfied that the aided person has, in relation to any application by that person relating to legal aid,—

- (i) intentionally or negligently made an untrue statement about that person's resources, or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after the aid was granted; or
  - (ii) intentionally contravened or failed to comply in any respect with this Act or with regulations made under this Act:
- (f) the aided person requests that the grant of legal aid be withdrawn.
- (3) In relation to a civil matter, the Agency may at any time amend the conditions on a grant of legal aid (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.

Compare: 1991 No 71 s 53

Section 26(1)(a): substituted, on 1 March 2007, by section 18(1) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 26(2): amended, on 1 March 2007, by section 18(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 26(3): added, on 1 March 2007, by section 18(3) of the Legal Services Amendment Act 2006 (2006 No 5).

## **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 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.
- (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.

Section 27: substituted, on 1 March 2007, by section 19 of the Legal Services Amendment Act 2006 (2006 No 5).

## **28 Consequences of withdrawing legal aid**

- (1) The withdrawal of legal aid does not affect—
  - (a) the aided person's obligations arising out of the conditions of the grant; or
  - (b) the Agency's rights to enforce those obligations; or
  - (c) the Agency's obligations to pay for the services provided under the grant before the date of its withdrawal.
- (2) If legal aid is withdrawn from an aided person because of an increase in the person's income or disposable capital, the 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.
- (4) If legal aid is withdrawn from a person who was receiving aid from a listed provider, the listed provider has the right to recover from the aided person the difference between the amount paid or payable by the Agency under this Act and the full amount of that provider's fees and disbursements.
- (5) The Agency is not obliged to pay for any services provided to an aided person after the date on which legal aid is withdrawn.

Compare: 1991 No 71 ss 53(4), 59, 60, 61

Section 28(2): substituted, on 1 March 2007, by section 20 of the Legal Services Amendment Act 2006 (2006 No 5).

Section 28(3): substituted, on 1 March 2007, by section 20 of the Legal Services Amendment Act 2006 (2006 No 5).

### *Reconsideration*

#### **29 Reconsideration**

- (1) An aided person, or an applicant for legal aid, who is aggrieved by a decision of the Agency that affects the person, may apply to the Agency for a reconsideration of the decision.
- (2) When the Agency receives an application for a reconsideration, the decision must be reconsidered by a person other than the person who made the original decision, and the person doing the reconsideration may take into account any new or additional information supplied by the person applying for the reconsideration.
- (3) The Agency may decline to reconsider a decision if the Agency has already reconsidered that decision or a decision relating to substantially the same issue.

Compare: 1991 No 71 s 63

### *How agency may enforce conditions of grant*

#### **30 Amount payable by aided person to Agency**

At any time, the total amount payable to the Agency by an aided person under the conditions of a grant is—

- (a) the amount of interim repayments outstanding (if any); and
- (b) if the proceedings have concluded, the amount of repayment payable (if any), determined in accordance with section 18.

Section 30(a): amended, on 1 March 2007, by section 21(1) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 30(b): amended, on 1 March 2007, by section 21(2) of the Legal Services Amendment Act 2006 (2006 No 5).

#### **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.
- (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.
  - (4) In making any arrangements under subsection (3), the Agency must have regard to the following principles:
    - (a) any debt that is to be paid from the aided person's income should be paid by the aided person within 5 years from when the debt arises:
    - (b) any debt that is to be paid from the aided person's income and capital should be paid by the aided person within 7 years from when the debt arises.
  - (5) Despite subsection (4), the Agency may, after having regard to the principles in that subsection, make whatever arrangements it considers appropriate in the circumstances.

Section 31: substituted, on 1 March 2007, by section 22 of the Legal Services Amendment Act 2006 (2006 No 5).

### **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.
- (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
  - (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
  - (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—
- (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
  - (c) gives the aided person a reasonable opportunity to make submissions on why the person should not commence or recommence payment of the debt in the time indicated; and
  - (d) considers any submissions by the aided person.
- (5) If the 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
  - (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).

Section 31A: inserted, on 1 March 2007, by section 22 of the Legal Services Amendment Act 2006 (2006 No 5).

### **32 Charges on proceeds of proceedings**

- (1) The proceeds of proceedings to which a grant of legal aid relates are subject to a charge in favour of the Agency for the amount of—

- (a) *[Repealed]*
  - (b) the repayment payable under the grant.
- (2) Subsection (1) operates to create a charge even if the grant of legal aid in respect of the relevant proceedings has been withdrawn.
  - (3) A charge created by this section on any damages or costs does not prevent a court from allowing them to be set off against other damages or costs in a case where a solicitor's lien for costs would not prevent it.
  - (4) A charge created by this section may be registered,—
    - (a) in the case of land, against that land in accordance with the Statutory Land Charges Registration Act 1928; or
    - (b) in the case of any other property, against that property in accordance with the Chattels Transfer Act 1924, the Personal Property Securities Act 1999, or the Motor Vehicle Securities Act 1989, as appropriate.
  - (5) Subsection (1) does not apply to property returned, transferred, or granted to an aided person as a result of proceedings before the Waitangi Tribunal.

Compare: 1991 No 71 ss 40, 41, 42, 59

Section 32(1)(a): repealed, on 1 March 2007, by section 23 of the Legal Services Amendment Act 2006 (2006 No 5).

### **33 Agency may exempt property from charge**

- (1) The Agency may, on application by an aided person, exempt any property that is part of the proceeds of proceedings from being subject to a charge under section 32.
- (2) The Agency may exercise its power under subsection (1) if it considers that, having regard to the value or nature of the property and all other relevant circumstances, it would be just and equitable to do so.
- (3) Any application for exemption must be made within 20 working days (or such longer time as the Agency, on application, allows) of the date of the judgment or out-of-court settlement giving rise to the proceeds of proceedings.
- (4) On receipt of an application for exemption, the Agency must—

- (a) decide whether to exempt the whole or any part of the property specified in the application, or any other property; and
- (b) advise the aided person of the decision, and of the aided person's right to apply for a reconsideration under section 29 and a review under section 54.

Compare: 1991 No 71 s 45

### **34 Transfer of charge**

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

Compare: 1991 No 71 s 49

### **35 Enforcement of charge**

- (1) In order to recover a debt due under a grant of legal aid, the Agency may enforce, in any manner that would be available if the charge had been given between the parties, a charge—
  - (a) registered in compliance with a condition of the grant imposed under section 15(3); or
  - (b) arising by operation of section 32, whether it is registered or not.
- (2) A transfer or act done with the intention, or having the effect, of defeating a charge referred to in subsection (1) is void as against the Agency, except where the transfer or act is to or in favour of a purchaser in good faith for value who, at the time of the transfer or act, had no notice of the charge.

Compare: 1991 No 71 s 43

**35A Interest on unpaid legal aid debt**

- (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.
- (2) Any interest charged by the Agency under subsection (1) must be at the rate specified in regulations made under this Act.

Section 35A: inserted, on 1 March 2007, by section 24 of the Legal Services Amendment Act 2006 (2006 No 5).

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

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

Compare: 1991 No 71 s 46

**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.

- (4) In subsection (1), **serious hardship** has the meaning given in section 37(6).

Section 36A: inserted, on 17 February 2010, by section 8 of the Legal Services Amendment Act 2009 (2009 No 69).

### **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:
- (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;
  - (c) the Agency considers that it would be just and equitable to write off the debt.
- (2) When a debt has been written off under this section, the Agency must give notice to the debtor of the write-off.
- (3) When a debt is written off under this section, the debtor is, from the date of the write-off, no longer liable to pay the debt.
- (4) If, despite the write-off, a debtor repays some or all of a written-off debt, the 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.
- (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
  - (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.

Section 37: substituted, on 1 March 2007, by section 25 of the Legal Services Amendment Act 2006 (2006 No 5).

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

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

Compare: 1991 No 71 s 82

Section 38(1): amended, on 1 March 2007, by section 26 of the Legal Services Amendment Act 2006 (2006 No 5).

**39 Agency to refund excess payments**

The Agency must refund any amount paid by an aided person to the Agency that is—

- (a) more than the aided person is or was required to pay; or
- (b) more than the cost of services.

Compare: 1991 No 71 ss 39, 75(1)(d)

Section 39(b): amended, on 1 March 2007, by section 27 of the Legal Services Amendment Act 2006 (2006 No 5).

*Award of costs in civil proceedings***40 Liability of aided person for costs**

- (1) If an aided person receives legal aid for civil proceedings, that person's liability under an order for costs made against him or her with respect to the proceedings must not exceed an amount (if any) that is reasonable for the aided person to pay having regard to all the circumstances, including the means of all the parties and their conduct in connection with the dispute.
- (2) No order for costs may be made against an aided person in a civil proceeding unless the court is satisfied that there are exceptional circumstances.
- (3) In determining whether there are exceptional circumstances under subsection (2), the court may take account of, but is not limited to, the following conduct by the aided person:

- (a) any conduct that causes the other party to incur unnecessary cost:
  - (b) any failure to comply with the procedural rules and orders of the court:
  - (c) any misleading or deceitful conduct:
  - (d) any unreasonable pursuit of 1 or more issues on which the aided person fails:
  - (e) any unreasonable refusal to negotiate a settlement or participate in alternative dispute resolution:
  - (f) any other conduct that abuses the processes of the court.
- (4) Any order for costs made against the aided person must specify the amount that the person would have been ordered to pay if this section had not affected that person's liability.
- (5) If, because of this section, no order for costs is made against the aided person, an order may be made specifying what order for costs would have been made against that person with respect to the proceedings if this section had not affected that person's liability.
- (6) If an order for costs is made against a next friend or guardian *ad litem* of an aided person who is a minor or is mentally disordered, then—
- (a) that next friend or guardian *ad litem* has the benefit of this section; and
  - (b) the means of the next friend or guardian *ad litem* are taken as being the means of the aided person.

Section 40: substituted, on 1 March 2007, by section 28 of the Legal Services Amendment Act 2006 (2006 No 5).

#### **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.
- (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.

- (3) In considering any such application, the Agency must have regard to the following matters:
  - (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.
- (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.
- (6) The Agency may recover any payment 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(5).
- (7) The Agency may make a payment under this section to a lawyer who is not a listed provider under this Act.

Section 41: substituted, on 1 March 2007, by section 28 of the Legal Services Amendment Act 2006 (2006 No 5).

#### *Legal aid grants for Treaty of Waitangi claims*

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

- (1) This section and sections 43 to 45 apply to an application for legal aid made in respect of any proceedings before the Waitangi Tribunal where—
  - (a) the application is made by a Maori; and
  - (b) the claim to which the application relates is submitted, or is to be submitted, by that Maori for the benefit of a group of Maori of which the applicant is a member.
- (2) The Agency may grant an application to which this section applies only if it is satisfied—
  - (a) that the case is one that requires legal representation, having regard to the nature of the proceedings and to



- the interest of the group of Maori for whose benefit the claim is submitted or is to be submitted; and
- (b) that the group of Maori would suffer substantial hardship if aid were not granted; and
  - (c) that the interest of that group of Maori is not sufficiently protected by any other claim.
- (3) The Agency must take into account the information supplied by the Waitangi Tribunal under section 44 when determining whether or not to grant legal aid to the applicant and may, in the light of that information,—
- (a) grant legal aid to the applicant subject to such conditions as it thinks fit relating to the purposes for which that aid is granted, or the period for which that aid is granted, or both; or
  - (b) defer its determination of the application for any period it thinks fit; or
  - (c) decline the application.
- (4) Nothing in this section prevents an applicant from making a further application for legal aid in respect of the proceedings to which the first application relates.

Compare: 1991 No 71 ss 72, 73

### **43 Assessment of financial resources**

- (1) In determining whether the group of Maori for whose benefit the claim to which the application relates is made would suffer substantial hardship if aid were not granted, the Agency may take into account not only the financial resources of those members of the group who are immediately involved in making the claim, but also the extent to which other members of the group, or any incorporated body that represents the members of the group, or both, might reasonably be expected to contribute towards the costs of the proceedings.
- (2) The Agency may, in its discretion, refuse to grant the application if the applicant does not supply it with sufficient information concerning the financial resources of such persons and bodies as the Agency may specify for the purposes of making a determination referred to in subsection (1).

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

Compare: 1991 No 71 s 72

#### **44 Agency to refer application to Waitangi Tribunal**

- (1) When an application to which this section applies is made to the Agency, the Agency must, before determining whether or not to grant the application, refer the application to the Waitangi Tribunal for the purpose of obtaining the following information about the claim to which the application relates:
- (a) the length of time that is likely to elapse before the Tribunal begins inquiring into the claim:
  - (b) the extent to which the claim might reasonably be dealt with by the Tribunal in conjunction with any other claim submitted to the Tribunal:
  - (c) whether or not, in the opinion of the Tribunal, the terms on which the applicant may be represented by a listed provider before the Tribunal in relation to the claim should be limited in any way and, if so, in what way.

- (2) The Tribunal must supply to the Agency the information referred to in subsection (1).  
Compare: 1991 No 71 s 73

**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.
- (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.
- (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.

Section 45: substituted, on 1 March 2007, by section 29 of the Legal Services Amendment Act 2006 (2006 No 5).

*Duty solicitor scheme*

**46 Continuation and administration of duty solicitor scheme**

- (1) The duty solicitor scheme established under section 156 of the former Act continues on and after the transition date as if it were established under this Act.
- (2) The Agency must administer the duty solicitor scheme in accordance with this Act and any regulations made under it, and in particular must determine the conditions under which listed providers provide services under the scheme.

Compare: 1991 No 71 s 156

**47 Object of duty solicitor scheme**

The object of the duty solicitor scheme is to ensure that there is available in each District Court a sufficient number of lawyers for the purpose of assisting, advising, and representing unrepresented defendants charged with an offence.

Compare: 1991 No 71 s 157(1)

**48 Duties of duty solicitors**

The duties of lawyers who act as duty solicitors include—

- (a) advising unrepresented defendants as to plea, the possibility of a remand without plea, and, where appropriate, the right to elect to be tried by a jury:
- (b) advising unrepresented defendants on how to arrange private legal representation or to apply for legal aid, and assisting such defendants to make those arrangements or applications:
- (c) advising unrepresented defendants as to bail:
- (d) carrying out any other duties specified by the Agency.

Compare: 1991 No 71 s 157(2)

*Police Detention Legal Assistance scheme***49 Continuation and administration of PDLA scheme**

- (1) The Police Detention Legal Assistance scheme established under section 158C of the former Act continues on and after the transition date as if it were established under this Act.
- (2) The Agency must administer the PDLA scheme in accordance with this Act and any regulations made under it, and in particular must determine the conditions under which listed providers provide services under the scheme.

Compare: 1991 No 71 ss 158C, 158H(1)

**50 Object of PDLA scheme**

The object of the PDLA scheme is to ensure that there is available a sufficient number of lawyers to provide legal advice, or legal assistance, or both, to any person—

- (a) to whom the scheme applies; and

- (b) who wishes to consult or instruct a lawyer about any matter relating to the person's questioning or detention.

Compare: 1991 No 71 s 158C

## **51 Who PDLA scheme applies to, and their rights**

- (1) The PDLA scheme applies to every unrepresented person who—
  - (a) is being questioned by the Police, or who the Police want to question, in relation to the commission or possible commission of an offence by that person, and who is advised by the Police, before or in the course of questioning, that he or she may consult a lawyer; or
  - (b) is being detained by the Police, with or without arrest, and is entitled, under section 23(1)(b) of the New Zealand Bill of Rights Act 1990, to consult and instruct a lawyer without delay.
- (2) Every person to whom the PDLA scheme applies is entitled (subject to this Act and any regulations made under it) to the services of 1 lawyer during the period for which the person is being questioned or is detained.

Compare: 1991 No 71 ss 2, 158C, 158E

## **52 Duties of listed providers under PDLA scheme**

The duties of lawyers who provide services under the PDLA scheme include the following:

- (a) advising persons to whom the scheme applies of—
  - (i) their rights and obligations; and
  - (ii) the requirements of any enactment under which they are detained (if applicable);
- (b) providing such other legal advice or assistance to those persons as they may reasonably require in the particular circumstances of the case, including (without limitation) attending at the place where those persons are being detained or questioned;
- (c) carrying out any other duties imposed by the Agency.

Compare: 1991 No 71 s 158E(2)

*Approved schemes***53 Approved schemes**

The Agency may establish and administer, in accordance with a current output agreement, approved schemes for the purpose of providing legal services that cannot be provided under any other scheme.

Compare: 1991 No 71 ss 95(1)(da), 158D

Section 53: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**Part 3****Reviews and appeals relating to legal aid***Reviews***54 Grounds for review**

- (1) An aided person or an applicant for legal aid may apply to the Review Panel for a review of a decision of the Agency referred to in subsection (2) on the grounds that the decision is—
  - (a) manifestly unreasonable; or
  - (b) wrong in law.
- (2) The decisions that may be reviewed are decisions that affect the applicant for review and that relate to any 1 or more of the following:
  - (a) an application for legal aid:
  - (b) any conditions imposed under section 15 or section 42 on a grant of legal aid:
  - (c) any amount payable by an aided person, whether as an interim repayment or repayment, under a grant of legal aid:
  - (d) the identity of any listed provider in a grant of legal aid:
  - (e) the maximum grant under a grant of legal aid:
  - (f) the withdrawal of, or amendment to, a grant of legal aid:
  - (g) the enforcement of any condition imposed under section 15 or section 42 on a grant of legal aid:
  - (h) any changes to, or dealings with, a charge on property arising out of a grant of legal aid:
  - (i) an application under section 41.
- (3) A listed provider or former listed provider may apply to the Review Panel for a review of a decision relating to the amount

payable by the Agency to that provider, on the grounds that the decision is—

- (a) manifestly unreasonable; or
- (b) wrong in law.

(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—

- (a) manifestly unreasonable; or
- (b) wrong in law.

(5) In this section, **decision** includes a failure or refusal to make a decision.

Compare: 1991 No 71 ss 16, 63

Section 54(2)(c): substituted, on 1 March 2007, by section 30(1) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 54(4): substituted, on 10 April 2006, by section 30(2) of the Legal Services Amendment Act 2006 (2006 No 5).

Section 54(5): added, on 10 April 2006, by section 30(2) of the Legal Services Amendment Act 2006 (2006 No 5).

## **55 Application for review**

An application for review must be made in the prescribed manner to the Convenor of the Review Panel—

- (a) within 20 working days after the date on which notification of the relevant decision is given to the applicant; or
- (b) within such further period as the Convenor, on application, allows.

Compare: 1991 No 71 ss 16, 63

## **55A Powers and duties of Convenor of Review Panel on receipt of application for review**

(1) On receipt of an application for review, the Convenor of the Review Panel—

- (a) may require the Agency or any person to provide any information relating to the decision or the application for review; and
- (b) must assign a team of 1, 2, or 3 members of the Panel to review the decision.

- (2) The Convenor must include 1 lawyer in every team assigned to a review.
- (3) The Convenor may be a member of any team reviewing a decision.

Section 55A: inserted, on 22 October 2003, by section 4 of the Legal Services Amendment Act 2003 (2003 No 81).

Section 55A(3): added, on 10 April 2006, by section 31 of the Legal Services Amendment Act 2006 (2006 No 5).

## **56 Review of decision by Review Panel**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) A team assigned to a review may require the Agency to provide either or both of the following:
  - (a) all information held by the Agency relating to the decision and to any reconsideration by the Agency of the decision:
  - (b) a written report setting out the considerations to which the Agency had regard in coming to its decision or when reconsidering it.
- (4) A team assigned to a review may receive and obtain from any person any submission, statement, document, information, or matter that may, in its opinion, assist it to deal effectively with the review before it.
- (5) The review of a decision must be conducted on the papers, with all reasonable speed.

Compare: 1991 No 71 ss 131, 134

Section 56(1): repealed, on 22 October 2003, by section 5(1) of the Legal Services Amendment Act 2003 (2003 No 81).

Section 56(2): repealed, on 22 October 2003, by section 5(1) of the Legal Services Amendment Act 2003 (2003 No 81).

Section 56(3): amended, on 22 October 2003, by section 5(2) of the Legal Services Amendment Act 2003 (2003 No 81).

Section 56(4): amended, on 22 October 2003, by section 5(2) of the Legal Services Amendment Act 2003 (2003 No 81).

## **57 Determination of review**

- (1) A determination by a team assigned to a review is a determination by the Review Panel.



- (2) The Review Panel may determine a review by confirming, modifying, or reversing the decision under review.
  - (3) Every determination by the Review Panel must be accompanied by a brief summary of the reasons for it.
- Compare: 1991 No 71 s 132

**58 Direction to reconsider**

- (1) The Review Panel may, instead of determining a review, give a direction to the Agency that it must reconsider all or any part of the decision to which the review relates.
- (2) If the Review Panel directs the Agency to reconsider a decision, the Panel must give reasons for the direction, and may set out the matters that the Agency must take into account in its reconsideration.
- (3) If the Agency receives a direction to reconsider, it must reconsider the decision, taking into account the reasons for the direction and any matters set out by the Review Panel.

Compare: 1991 No 71 s 133

*Appeals and references on question of law*

**59 Appeal on question of law**

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

Compare: 1991 No 71 s 136

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

Sections 144 to 144B of the Summary Proceedings Act 1957 (which provide for appeals to the Court of Appeal and Supreme Court) apply to determinations of the High Court on an appeal under section 59 of this Act as if they were determinations under section 107 of that Act.

Section 60: substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

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

The Convenor of the Review Panel may state a case for the opinion of the High Court on any point of law that arises on a review under this Part of a decision of the Agency.

Compare: 1991 No 71 s 135

*Legal Aid Review Panel***62 Establishment and membership of Legal Aid Review Panel**

- (1) The Legal Aid Review Panel is established.
- (2) The Review Panel consists of members who are each appointed by the Attorney-General for a specified term of not more than 3 years.
- (3) The Attorney-General must appoint 1 member, who must be a lawyer who has held a practising certificate for at least 7 years, to be Convenor of the Panel.
- (4) When appointing members, the Attorney-General must ensure that the Review Panel has a sufficient number of people of the following classes to deal promptly with all reviews:
  - (a) lawyers, who between them have experience in a range of legal areas and types of proceedings:
  - (b) non-lawyers, who have relevant knowledge, experience, and skill.
- (5) No person may be appointed as a member of the Review Panel if he or she is, or has within the past 5 years been, a member of the Board or Legal Services Board, or an employee of the Agency or Legal Services Board; but members of the Review Panel may be reappointed.
- (6) The Attorney-General may remove a member from office for any of the following, proved to the satisfaction of the Attorney-General:
  - (a) failure or inability to adequately perform the duties of office:
  - (b) neglect of duty:
  - (c) misconduct.
- (7) A member may resign by written notice to the Attorney-General.

- (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.
- (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.

Section 62(8): added, on 10 April 2006, by section 32 of the Legal Services Amendment Act 2006 (2006 No 5).

Section 62(9): added, on 10 April 2006, by section 32 of the Legal Services Amendment Act 2006 (2006 No 5).

#### **62A Delegation by Convenor of Review Panel**

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

Section 62A: inserted, on 22 October 2003, by section 6 of the Legal Services Amendment Act 2003 (2003 No 81).

**63 Fees of members of Review Panel**

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

Section 63: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**64 Review Panel serviced by Agency**

The Agency must provide the administrative support necessary to enable the Review Panel to perform its functions efficiently and effectively.

**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.

Section 64A: inserted, on 10 April 2006, by section 33 of the Legal Services Amendment Act 2006 (2006 No 5).

## **Part 4** **Listed providers**

### *General provisions*

#### **65 Obligations relating to professional conduct**

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

Compare: 1991 No 71 s 89(a)

#### **66 Listed providers not to take unauthorised payments**

No listed provider may take payments from or in respect of a person to whom services are provided under any scheme unless the payments are authorised by or under this Act, or by the Agency acting under the authority of this Act or any regulations made under it.

Compare: 1991 No 71 ss 11(3), 35(2), 77, 157A, 158K

#### **67 Listed providers to pay legal aid disbursements**

Except as otherwise authorised by the Agency, listed providers must pay all disbursements relating to a legally aided matter, but may claim for reimbursement of those costs under section 74.

Compare: 1991 No 71 s 78

#### **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.
- (3) For the purposes of subsection (2)(c), an aided person is deemed to have waived any legal professional privilege that might otherwise prevent a person to whom this section applies from complying with subsection (2)(c).
- (4) If a person to whom this section applies fails to fulfil his or her duties under this section, the money that should have been paid to the Agency under a charge or from proceeds of proceedings, may be deducted from any money owing by the Agency to that person.

Section 68: substituted, on 1 March 2007, by section 34 of the Legal Services Amendment Act 2006 (2006 No 5).

### *Listing*

#### **69 Effect of listing**

- (1) A person may not provide legal services under a scheme unless he or she is listed as approved to provide those services.
- (2) The Agency may impose conditions on an approval to provide services, in which case the person must provide the services in accordance with those conditions.
- (3) The Agency is not obliged to pay for services provided by a listed provider—
  - (a) who, at the time of providing those services, was not approved to provide them; or

- (b) who provided those services in breach of any conditions attached to an approval.

**70 Agency to establish and maintain legal service list**

- (1) The Agency must establish and maintain a legal service list.
- (2) The legal service list must show which legal services each listed provider is approved to provide, and any conditions attaching to the approvals.
- (3) The Agency must ensure that the list, whether in printed or electronic form, is available for inspection free of charge by members of the public.

**71 Listing criteria**

- (1) The Agency may develop and adopt listing criteria for determining when a person may be approved to provide specified legal services.
- (2) In developing new or amended listing criteria, the Agency—
  - (a) must consult with such representatives of the legal profession as the Agency considers to be appropriate; and
  - (b) may consult with any other persons that the Agency considers will assist it in relation to the particular listing criteria under development.
- (3) In order to adopt new or amended listing criteria, the Agency must give notice in the *Gazette* of—
  - (a) the service or services to which the criteria relate; and
  - (b) the date on which the criteria will come into force; and
  - (c) details of how copies of the criteria may be obtained.
- (4) Subsection (2) does not apply if the Agency intends to adopt listing criteria that are essentially the same as those that applied to a particular service or services immediately before the transition date.
- (5) For the purpose of this section, the withdrawal of listing criteria is to be treated as an amendment of the criteria.

**72 Applications for listing**

- (1) Every person applying for listing, or amendment to the approvals in his or her listing, must apply in the prescribed manner to the Agency.

- (2) If listing criteria that are relevant to all or part of the application have been adopted under section 71, the application or relevant part of the application must be determined in accordance with those criteria.
- (3) If the Agency accepts all or part of a person's application, the Agency must—
  - (a) notify the person of—
    - (i) any approvals to be entered in the person's listing; and
    - (ii) any conditions attaching to any approvals in the person's listing; and
  - (b) enter the details of any approvals and conditions in the person's listing on the legal services list.
- (4) If the Agency does not accept all or any part of the person's application, the Agency must—
  - (a) notify the person and invite submissions; and
  - (b) consider those submissions, and notify the applicant of its revised decision.
- (5) If the applicant accepts the Agency's revised decision, the Agency must take the steps set out in paragraphs (a) and (b) of subsection (3).
- (6) If the applicant does not accept all or part of the Agency's revised decision, he or she may request an opportunity to be heard by the Agency in relation to those parts of the decision that the applicant wants to challenge.
- (7) The Agency must, as soon as practicable, arrange for the applicant to be heard and, following that hearing, must make a final decision.

#### **72A Temporary suspension of listing**

- (1) The Agency may temporarily suspend any 1 or more approvals in a person's listing if—
  - (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—



- (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.
- (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.
- (5) The written notice must specify the grounds for the temporary suspension.
- (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.

Section 72A: inserted, on 1 March 2007, by section 35 of the Legal Services Amendment Act 2006 (2006 No 5).

### **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:
  - (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:

- (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;
  - (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 sections 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.
- (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.
- (4) The written notice must specify the grounds for the cancellation.
- (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.

Section 73: substituted, on 1 March 2007, by section 36 of the Legal Services Amendment Act 2006 (2006 No 5).

### *Payment for legal aid work*

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

Claims for payment in respect of legal services provided under the legal aid scheme must be made by the lead provider to the Agency in the prescribed manner and must show—

- (a) the fees claimed by, or the charges attributable to, the lead provider; and
- (b) the fees claimed by, or the charges attributable to, any other provider who acted on the matter; and

- (c) the disbursements claimed by the lead provider and any other provider who acted on the matter.

Compare: 1991 No 71 s 79

**75 Agency may approve, defer for examination, or decline payment of claim**

- (1) On receiving a claim for payment from a lead provider, the Agency may—
  - (a) approve the claim or any part of it; or
  - (b) defer payment of all or part of the claim in order that the deferred part may be examined; or
  - (c) decline payment of the claim or any part of it.
- (2) A payment may be deferred and a claim, or part of a claim, examined if—
  - (a) the claim or part of the claim appears to the Agency to be excessive in light of the Agency's standard rates for payment or its experience with comparable claims; or
  - (b) an aided person has requested an examination of the cost of services, under section 38.
- (3) The Agency may decline some or all of a claim on any 1 or more of the following grounds:
  - (a) the claim exceeds the maximum grant specified in the grant;
  - (b) the claim or part of a claim is for disbursements of a type not approved for payment by the Agency;
  - (c) an examination of the claim or part of a claim under subsection (2) has determined that the claim is excessive or inaccurate.

Compare: 1991 No 71 ss 11(2)(b), 80, 82, 83

**76 Agency to pay approved claims**

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

Compare: 1991 No 71 s 85

*Examination and audit***77 Agency may examine claims**

- (1) The Agency may examine a claim, or part of a claim, by a listed provider on either or both of the grounds specified in section 75(2).
- (2) Every examination of a claim, or part of a claim, must be conducted by an auditor.

Compare: 1991 No 71 s 82

**78 Agency may audit listed providers**

- (1) The Agency may audit any listed provider at any time.
- (2) Every audit must be conducted by an auditor.
- (3) The purpose of the audit is to enable the Agency to assess the quality and value of the services provided by the listed provider that have been, or may be, paid for by the Agency.

**79 Listed providers must co-operate with examinations and audits**

- (1) A listed provider who is subject to an examination or audit must co-operate with the auditor and, in particular, must—
  - (a) ensure that the auditor is given access at all reasonable times to all documents under the control of the provider that relate to the claim under examination, or to matters for which the provider has claimed or may claim payment from the Agency (as the case may require); and
  - (b) use his or her best endeavours to ensure that questions relating to the claim being examined, or to any matter to which the audit relates, are answered fully, frankly, promptly, and in the form (written or oral) required by the auditor; and
  - (c) permit, and if necessary assist, the auditor to copy any document or to reproduce, in usable form, information recorded or stored in a document.
- (2) A listed provider is not obliged to comply with subsection (1) until the auditor shows the provider a copy of the auditor's authority from the Agency to conduct the examination or audit.
- (3) If an auditor considers that a listed provider who is being examined or audited is not complying, or has not adequately

complied, with subsection (1), the auditor must notify the Agency and the provider.

- (4) On receipt of a notice, the Agency may suspend payments of any claim currently lodged with it by the listed provider, and the payments may remain suspended until such time as the Agency is satisfied that the provider is co-operating with the auditor.
- (5) Continuing failure to co-operate may be an offence under section 112.

### *Pilot plans*

#### **80 Agency may set up pilot plans**

- (1) The Agency may develop, trial, and evaluate pilot plans for the delivery of schemes by listed providers.
- (2) No pilot may operate for more than 5 years.
- (3) No more than 1 field trial of a pilot may be associated with any 1 court at any 1 time, other than in an incidental or minor way.
- (4) A pilot may involve no more than 3 field trials at any 1 time.
- (5) The Agency may not set up a field trial of a pilot in a locality without first—
  - (a) consulting with representatives of local lawyers and the community; and
  - (b) determining the maximum proportion of the likely total relevant caseload in that locality that the pilot will undertake.

#### **81 Principles to apply to pilot plans**

When developing, trialing, and evaluating a pilot plan, the Agency must take all reasonable steps to ensure—

- (a) that the pilot will maintain or improve the quality of the delivery of the relevant service; and
- (b) that the pilot will not have either of the following results:
  - (i) that people requiring the service cannot, in practice, obtain the service except under the pilot;
  - (ii) that lawyers outside the pilot are denied, in practice, the opportunity to offer the service, either generally, or in relation to the place where the

pilot is operating, or in relation to the client group the pilot is directed at.

## **82 Pilot plan to be in output agreement**

No pilot plan may operate unless the terms of its operation are set out in the output agreement applying at that time.

Section 82 heading: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 82: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **83 Evaluation of pilot plans**

- (1) Every pilot plan must be evaluated, and the evaluation must address, in particular,—
  - (a) the extent to which the pilot complies with the principles set out in paragraphs (a) and (b) of section 81; and
  - (b) the effect of the pilot on other parts of the justice system, such as court processes, other schemes, and the legal profession.
- (2) The Minister must present a copy of every evaluation of a pilot to the House of Representatives within 6 months of the Minister's receipt of the evaluation.

## **84 Continuation of employment of salaried officers**

- (1) If the Minister is satisfied that the evaluation of a pilot plan involving the employment of salaried officers under section 100(1) indicates that the pilot should be extended, the Minister may, by notice in the *Gazette*, either—
  - (a) extend the pilot for a specified period, in which case the notice must specify the scope of the extended pilot; or
  - (b) authorise the Agency to employ salaried officers on a permanent basis, but only for the same or related purposes as were trialed in the pilot.
- (2) This section applies despite section 80(2), (3), or (4).

## **Part 5** **Community legal services**

### *Community law centres*

#### **85 Definition of community law centre for purposes of Act**

- (1) For the purposes of this Act, a **community law centre** is a body whose primary function is, or includes, the provision of community legal services to communities with unmet legal needs, and in particular to people with insufficient means to pay for legal services.
- (2) Every community law centre must identify a particular community that it is intended primarily to serve, and the community can be defined geographically, or by reference to some common interest or characteristic, or both.
- (3) A body may, for the purposes of this Act, be a community law centre even if it performs functions in addition to those described in subsection (1).
- (4) In this Part, **community** includes the individuals who are part of it.

Compare: 1991 No 71 s 155

#### **86 Agency's role in setting up community law centres**

- (1) In performing its function under section 92(b), the Agency may investigate the need for community law centres to service particular communities and, if it considers that a particular law centre is needed, may assist in setting it up.
- (2) When investigating the need for a community law centre to serve a particular community, the Agency may do anything it considers necessary, including—
  - (a) assessing the extent to which the community is unable to access legal services because it has insufficient means to pay for them:
  - (b) providing advice on, and, if the Agency considers it appropriate, financial support for, setting up a pilot centre to operate for a specified period:
  - (c) assessing any pilot centre.
- (3) The kind of assistance that the Agency may provide in assisting to set up a community law centre includes—

- (a) giving advice on the most appropriate way in which the services of the community law centre can be provided to a particular community; and
- (b) making grants of money to help with establishment costs.

Compare: 1991 No 71 ss 95(1)(d), 154

### **87 Agency to contract with community law centres**

- (1) The Agency may enter into a contract under this section with any community law centre for the provision of any community legal services.
- (2) A contract under this section may be for any term of up to 5 years, but the amount of money provided under it must be reviewed annually.
- (3) The money provided by the Agency to a community law centre under a contract under this section must come from either or both—
  - (a) the Special Fund;
  - (b) any other money held by the Agency specifically for the support of community law centres.
- (4) Subsection (1) does not prevent a community law centre obtaining money under any other kind of arrangement, including (for example)—
  - (a) obtaining money from the Agency for services provided under a scheme;
  - (b) obtaining money from sources other than the Agency.

Compare: 1991 No 71 s 95(1)(e)

### **88 Allocation of funding between community law centres**

- (1) If, in any year, there is a greater demand from community law centres for funding than there is money available, the Agency's funding contracts under section 87 must be made on the basis of obtaining, for the amount of money available, the maximum access to community legal services by communities with insufficient means to pay for them.
- (2) When considering the amount of money to be provided under a contract with a community law centre, the Agency must have regard to—



- (a) the level of unmet legal need in the community served by the community law centre, relative to that of other communities; and
  - (b) the capacity of the community to pay for legal services, relative to the capacity for other communities to pay for them; and
  - (c) the effectiveness, or likely effectiveness, of the community law centre in providing those services to the community; and
  - (d) the benefit of ensuring continuity in the delivery of services; and
  - (e) the need to provide reasonable access by communities to community law centres throughout the country; and
  - (f) alternative providers of legal services that are (or will be) available in practice to the community.
- (3) Before determining the amount of funding to be available to each community law centre, the Agency must receive and consider the advice of the Public Advisory Committee on the matter.

### *Education and research*

#### **89 Education**

In order to promote access to justice, the Agency may provide or fund law-related education and legal information to the public or any section of the public.

#### **90 Research**

- (1) The Agency may undertake or fund research into—
  - (a) existing or proposed schemes and community legal services; and
  - (b) the unmet legal needs of communities and how they may be met.
- (2) A research programme may include the development, operation, and evaluation of pilot programmes for the delivery of community legal services.

## Part 6

### Legal Services Agency

#### 91 Agency established

- (1) There continues to be a body corporate that is the same body as the Legal Services Board but, on and from the transition date,—
  - (a) the body is named the Legal Services Agency; and
  - (b) the body is established by this section.
- (2) The Agency is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to the Agency except to the extent that this Act expressly provides otherwise.
- (4) *[Repealed]*

Compare: 1991 No 71 ss 94, 109, 110; 1998 No 114 s 328

Section 91(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 91(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 91(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 92 Functions of Agency

The functions of the Agency are as follows:

- (a) to administer schemes in as consistent, accountable, inexpensive, and efficient a manner as is consistent with the purpose of this Act:
- (b) to fund, provide, and support community legal services for the public or any section of the public, as provided for in Part 5:
- (c) to investigate and advise on any matter that is referred to it by the Minister and that relates to schemes or community legal services:
- (d) to carry out any other functions that are conferred on it by this Act or any other enactment.

Compare: 1991 No 71 s 95

**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.
- (2) Subsection (1) does not limit any function or power conferred on the Agency under this Act.

Section 92A: inserted, on 1 March 2007, by section 37 of the Legal Services Amendment Act 2006 (2006 No 5).

**93 Powers of Agency**

*[Repealed]*

Section 93: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**94 Agency managed by Board**

*[Repealed]*

Section 94: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**95 Appointment of Board**

- (1) The Board of the Agency must have no more than 6 members.
- (2) *[Repealed]*
- (3) Before making appointments to the Board under section 28(1)(a) of the Crown Entities Act 2004, the Minister must consult with the Ministers of Consumer Affairs, Maori Affairs, Pacific Island Affairs, and Women's Affairs.

Section 95(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 95(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 95(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**96 Schedule 2 contains provisions applying to Board and members**

The provisions of Schedule 2 apply to the Board and its members.

**97 Agency to comply with Government policy***[Repealed]*

Section 97: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**98 Limitation on Minister's powers to direct***[Repealed]*

Section 98: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**99 Agency to have powers of Commission of Inquiry**

For the purposes of this Act, sections 4A to 9 of the Commissions of Inquiry Act 1908 apply to the Agency as if it were a Commission of Inquiry established under that Act.

Compare: 1991 No 71 s 153

**100 Agency may employ listed providers as salaried officers**

- (1) The Agency may employ listed providers as salaried officers of the Agency to provide legal services under any scheme.
- (2) The Agency may employ salaried officers under this section only in accordance with a pilot plan operating under section 80, except to the extent authorised by the Minister under section 84.
- (3) The Agency may not employ salaried officers to work in a locality without first—
  - (a) consulting with representatives of local lawyers and the community; and
  - (b) determining the maximum proportion of the likely total caseload, or total caseload of a specified type, in that locality that the salaried officer or officers will undertake.

**101 Local consultative groups**

- (1) The Agency may, in order to obtain advice, establish 1 or more local consultative groups with either or both of the following functions:
  - (a) to monitor the delivery of legal aid and other schemes in an area;
  - (b) to assess and monitor listed providers, and applicants for listing, who work in the area.

- (2) Despite any enactment or rule of law to the contrary, the members of a local consultative group may, for the purpose of performing their functions under this section, review any of the following that are referred to the group by the Agency:
- (a) any legal aid file;
  - (b) any application for listing;
  - (c) any application for an amendment to approvals in a listing.

**102 Annual report**

- (1) The annual report of the Agency under section 150 of the Crown Entities Act 2004 must indicate—
- (a) the total amount paid out by the Agency during that year for each of the following:
    - (i) the legal aid scheme;
    - (ii) the duty solicitor scheme;
    - (iii) the PDLA scheme;
    - (iv) each approved scheme that has operated during the year; and
  - (b) the total of all other amounts paid during that year out of the funds of the Agency; and
  - (c) the total of all amounts received under this Act by the Agency during that year by way of interim repayments and repayments from aided persons; and
  - (d) the total amount received by the Agency during that year from the Special Fund; and
  - (e) the total amount paid by the Agency with money from the Special Fund under contracts with community law centres; and
  - (f) the total amount paid by the Agency in investigating the need for, and assisting in setting up, community law centres; and
  - (g) the total amount spent by the Agency during that year on education and on research; and
  - (h) any other matter necessary to give an overall picture of the operation of the Act during the year.

- (2) *[Repealed]*

Compare: 1991 No 71 s 111

Section 102(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 102(1)(c): amended, on 1 March 2007, by section 38 of the Legal Services Amendment Act 2006 (2006 No 5).

Section 102(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **103 Agency's finances**

*[Repealed]*

Section 103: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **Part 7 Public Advisory Committee**

### **104 Establishment and membership of Public Advisory Committee**

- (1) The Agency must establish a Public Advisory Committee.
- (2) The Agency must ensure that the Public Advisory Committee includes people who represent the interests of women, Maori, Pacific Island people, young people, older people, people with disabilities, consumers, the legal profession, and community law centres.
- (3) No member of the Board, and no employee of the Agency, may be a member of the Public Advisory Committee.
- (4) A person may be appointed to, and removed from, membership of the Public Advisory Committee by notice in writing from the Agency.
- (5) For the avoidance of doubt, the Public Advisory Committee is not a committee of the Board.

Section 104(5): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **105 Functions of Public Advisory Committee**

- (1) The functions of the Public Advisory Committee are—
  - (a) to provide advice to the Agency on community concerns about, and responses to, schemes and community legal services that are or could be provided under this Act; and

- (b) to provide advice to the Agency on the unmet legal needs of communities; and
  - (c) to provide advice to the Agency on funding for individual community law centres, and for community law centres in general; and
  - (d) to provide advice to the Agency on research into schemes and community legal services; and
  - (e) to provide advice to the Agency on legal education programmes for the public or any section of the public; and
  - (f) to provide advice to the Agency on ways to make the information and forms relating to schemes understandable to, and usable by, as wide a range of people as possible; and
  - (g) to provide advice to the Agency on any other matters that the Agency asks it to provide advice on; and
  - (h) to carry out the functions of the Agency described in section 86, but only if the Agency requires it to do so; and
  - (i) to give reports to the Agency on any other matters that the Public Advisory Committee considers it should report on.
- (2) The Public Advisory Committee must perform its functions, other than the function described in subsection (1)(i), in accordance with any directions given by the Agency.
- (3) The Agency may not ask for, and the Public Advisory Committee may not give, advice on individual applications for, or grants of, legal aid.

#### **106 Powers of Public Advisory Committee**

The Public Advisory Committee has all the powers necessary for it to carry out its functions, and in particular may, subject to the direction of the Agency,—

- (a) regulate its own procedure; and
- (b) establish regional or other subcommittees to assist it in performing its functions.

#### **107 Fees of members of Public Advisory Committee**

- (1) A member of the Public Advisory Committee or any subcommittee of the Public Advisory Committee is entitled—

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

Section 107: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **108 Public Advisory Committee serviced by Agency**

The Agency must provide the administrative support necessary to enable the Public Advisory Committee to perform its functions efficiently and effectively.

### **Part 8 Miscellaneous provisions**

#### *Disclosure of information*

#### **109 Disclosure of information**

- (1) In relation to an application for legal aid for a civil matter, or for the payment of costs under section 41, every person has the same privileges in relation to giving information, answering questions, and producing documents, papers, and things, as witnesses have in any court.
- (2) Except as provided in this section, neither the Agency nor the Review Panel may require any person who is bound or privileged by an enactment or rule of law to maintain secrecy about a matter to breach secrecy by supplying information or answering questions about the matter, or producing documents or things relating to it.
- (3) Despite subsection (2), the Agency and the Review Panel are both allowed to require a person who is bound or privileged



by an enactment or rule of law to maintain secrecy to breach that secrecy if—

- (a) the breach relates to an applicant for legal aid for a civil matter; and
  - (b) the applicant has given consent in writing to the breach.
- (4) A person required to breach secrecy under subsection (3) must comply with the requirement made under that subsection.
- (5) Despite subsection (2), a person may disclose to the 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—
- (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).
- (6) The Agency may advise any person who disclosed a communication under subsection (5) of whether the grant has been withdrawn or amended.

Compare: 1991 No 71 ss 54, 91

Section 109(5): substituted, on 1 March 2007, by section 39 of the Legal Services Amendment Act 2006 (2006 No 5).

#### **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.
- (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.

Section 109A: inserted, on 1 March 2007, by section 40 of the Legal Services Amendment Act 2006 (2006 No 5).

*Offences***110 Misrepresentation, etc**

- (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—
- (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
  - (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.
- (2) If a person is convicted of an offence under subsection (1), the Agency may recover from that person, as a debt due to the Agency, any amount paid under a grant of legal aid.
- (3) Despite section 14 of the Summary Proceedings Act 1957, an information for an offence under this section may be laid at any time within 2 years from the time when the matter of the information arose.

Compare: 1991 No 71 s 92

Section 110(1): substituted, on 1 March 2007, by section 41 of the Legal Services Amendment Act 2006 (2006 No 5).

**111 Offence in relation to listing**

Every listed provider commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000, who makes a false or misleading representation in relation to any application for listing or application for an amendment to the approvals in his or her listing.

**112 Offences in relation to examination and audit**

Every listed provider or former listed provider commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who, having received a notice under section 79(3), fails to comply with section 79(1) to such a degree that the auditors conducting the examination or audit to which the

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

### *Regulations*

#### **113 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) determining the amount or amounts payable by an aided person (other than as a repayment under section 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:
    - (ii) prescribing the amount or amounts, based on income and capital, payable by an aided person as a repayment:
    - (iii) prescribing a method of calculating an amount or amounts, based on income and capital, payable by an aided person as a repayment:
  - (b) prescribing a method or methods for calculating what maximum grant, if any, should be set under a grant of legal aid in respect of proceedings other than victims' claims proceedings:
  - (c) prescribing for the purposes of section 20(4), the amount of the maximum grant to be specified for every grant of legal aid in respect of victims' claims proceedings:
  - (d) determining whether a person is eligible for legal aid by—
    - (i) prescribing maximum levels of income and disposable capital:
    - (ii) prescribing a method of assessing financial means:
  - (e) prescribing allowances for use in calculating a person's disposable capital:
  - (f) prescribing deductions that may be made from the cost of services for the purpose of determining the repayment payable by an aided person under a grant of legal aid:

- (g) prescribing the manner in which applications for, and grants of, legal aid in respect of minors, and other people with special requirements, are to be dealt with:
- (h) 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:
- (i) prescribing conditions relating to the delivery of services under any scheme:
- (j) making provision, in respect of the calculation of the income, disposable capital, or capital of an applicant for legal aid, for all or any of the following:
  - (i) taking into account fluctuations of income:
  - (ii) determining the value of any property:
  - (iii) including in the resources of the applicant any property that has been disposed of:
  - (iv) excluding from the resources of the applicant any liabilities incurred by the applicant for no consideration, or for a grossly inadequate consideration:
  - (v) taking into account any benefit to which the applicant is entitled or which the applicant might receive in connection with property held on trust:
- (k) prescribing matters relating to the way in which the Agency administers charges, including prescribing maximum rates of interest that may be charged:
- (l) prescribing amounts or methods for calculating the cost of services:
- (m) prescribing the rate of interest that may be charged for the purposes of section 35A:
- (n) 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:
- (o) adjusting, or prescribing a method for adjusting, the maximum amount of repayments for the purposes of section 17:
- (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:
  - (p) 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—
  - (a) distinguish between applicants for legal aid on any grounds, for example, the type of proceedings to which the application relates, or the level of income or disposable capital of the applicant; or
  - (b) distinguish between aided persons on any grounds, for example, the type of proceedings to which the grant relates, or the level of income, disposable capital, or capital of the aided person.
- (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.
- (4) When prescribing maximum levels of income for the purpose of determining an applicant's eligibility for legal aid or when prescribing the maximum amount of repayments payable by an aided person, regulations may take into account whether the applicant or aided person has—
  - (a) a spouse or partner:
  - (b) any dependent children, and the number of dependent children.
- (5) 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—
  - (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 that the Legal Services Amendment Act 2006 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.
- (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.
- (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.
- (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:
  - (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.

Section 113: substituted, on 1 March 2007, by section 42 of the Legal Services Amendment Act 2006 (2006 No 5).

Section 113(1)(oa): inserted, on 17 February 2010, by section 9(1) of the Legal Services Amendment Act 2009 (2009 No 69).

Section 113(8): added, on 17 February 2010, by section 9(2) of the Legal Services Amendment Act 2009 (2009 No 69).

### *Service*

#### **114 Service of notices, etc**

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

- (2) If a notice or other communication is sent to a person by post, then, in the absence of proof to the contrary, the notice or other communication is deemed to have been given to that person when the letter would have been delivered in the ordinary course of post.
- (3) In proving delivery, it is sufficient to prove that the letter was properly addressed and posted.  
Compare: SR 1991/293 r 60

*Miscellaneous*

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

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

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

Compare: 1991 No 71 s 89(b)

**Part 9**

**Transitional and saving provisions**

*Transitional provisions*

**116 Functions of Legal Services Board**

- (1) This section applies between the date on which this section comes into force and the transition date.
- (2) If, at any time during which this section applies, any District Legal Services Committee or any District Subcommittee appears to the Legal Services Board to be unable to fulfil any of its functions, the Legal Services Board may assume responsibility for carrying out any such functions.
- (3) The Legal Services Board may not assume responsibility for all or any of the functions of a District Legal Services Committee or District Subcommittee—
  - (a) except at the request of the relevant Committee or Subcommittee; or
  - (b) until a date that is 2 weeks after the date on which the Legal Services Board gives notice to the relevant Com-

mittee or Subcommittee of its intention to assume specified responsibilities.

- (4) The Legal Services Board has all the powers necessary to carry out any functions assumed under this section.

#### **116A Legal aid granted under Legal Aid Act 1969**

- (1) On and after the date on which the Legal Services Amendment Act 2003 comes into force, any application made, or proceedings commenced, under the Legal Aid Act 1969 must, to the extent that the application or proceedings were not dealt with before that date, be continued or completed by the Agency as if the application or proceedings had been made or commenced under this Act.
- (2) All charges created by or under the Legal Aid Act 1969 are vested in the Agency.
- (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.
- (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.
- (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),—
- (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.

Section 116A: inserted, on 22 October 2003, by section 7 of the Legal Services Amendment Act 2003 (2003 No 81).

Section 116A(2): substituted, on 10 April 2006, by section 43 of the Legal Services Amendment Act 2006 (2006 No 5).



Section 116A(3): added, on 10 April 2006, by section 43 of the Legal Services Amendment Act 2006 (2006 No 5).

Section 116A(4): added, on 10 April 2006, by section 43 of the Legal Services Amendment Act 2006 (2006 No 5).

Section 116A(5): added, on 10 April 2006, by section 43 of the Legal Services Amendment Act 2006 (2006 No 5).

Section 116A(6): added, on 10 April 2006, by section 43 of the Legal Services Amendment Act 2006 (2006 No 5).

### **117 Legal aid granted under former Act**

- (1) Legal aid granted under the former Act is not affected by the repeal of that Act; but, subject to section 117A, after the transition date, this Act applies to that aid as if it had been granted under this Act.
- (2) Every person providing services under a grant of legal aid approved before the transitional date is deemed, after that date and for the purposes of that grant only, to be a listed provider who is approved to provide the services provided under that grant.
- (3) On and after the transition date, an application that was properly made before that date under the former Act must, to the extent that it was not dealt with before that date, be dealt with as if the application had been properly made under this Act.

(4) *[Repealed]*

Compare: 1991 No 71 s 160(5)

Section 117(1): amended, on 27 September 2001, by section 3(2) of the Legal Services Amendment Act 2001 (2001 No 70).

Section 117(4): repealed, on 22 October 2003, by section 8 of the Legal Services Amendment Act 2003 (2003 No 81).

### **117A Repayments in respect of certain legal aid granted under former Act**

- (1) This section applies if legal aid was granted under the former Act in respect of civil proceedings, but—
  - (a) the proceedings were not commenced; or
  - (b) the proceedings were commenced but not completed; or
  - (c) there are no proceeds of the proceedings; or
  - (d) the proceeds of the proceedings are not enough to cover the repayment payable (by virtue of section 15(2)) calculated under section 18.

- (2) The Agency may give the applicant concerned notice requiring the applicant to contribute a further amount if—
  - (a) this section applies; and
  - (b) a further contribution could have been required under the former Act.
- (3) The further amount required to be contributed under subsection (2) must be no greater than the further contribution that could have been required under the former Act.
- (4) This Act applies to a further amount required to be contributed under subsection (2) as if it were a contribution within the meaning of this Act (as it read before the commencement of the Legal Services Amendment Act 2006).
- (5) This section applies in respect of completed proceedings—
  - (a) whether they were completed before or after the commencement of this section; and
  - (b) whether or not a repayment has previously been made or required to be made (before or after the commencement of this section) under section 15(2).

Section 117A: inserted, on 27 September 2001, by section 3(1) of the Legal Services Amendment Act 2001 (2001 No 70).

Section 117A(4): amended, on 1 March 2007, by section 44 of the Legal Services Amendment Act 2006 (2006 No 5).

### **117B District Legal Aid Committees**

- (1) Every District Legal Aid Committee established under the Legal Aid Act 1969 ceases to exist at the close of the day before the date on which the Legal Services Amendment Act 2003 comes into force.
- (2) No member of a District Legal Aid Committee is entitled to compensation as a result of those Committees ceasing to exist.
- (3) All assets and liabilities of a District Legal Aid Committee, and all records of the Committee, vest in the Agency at the close of the day before the date on which the Legal Services Amendment Act 2003 comes into force.

Section 117B: inserted, on 22 October 2003, by section 9 of the Legal Services Amendment Act 2003 (2003 No 81).

**118 Community law centres**

Any funding arrangement in place on the day before the transition date between the Legal Services Board and a community law centre established under the former Act continues, on and after the transition date, until the earlier of—

- (a) the date of commencement of a contract entered into under section 87(1); and
- (b) the date on which, in accordance with the terms of the arrangement, the funding arrangement ends.

**119 Instructions continue to apply**

Instructions issued by the Legal Services Board under section 96 of the former Act continue to apply, with all necessary modifications, until they are revoked by the Agency by notice in the *Gazette*—

- (a) giving the date on which the revocation will take effect; and
- (b) stating where copies of any advice or information that replaces the instructions may be inspected free of charge and purchased at a reasonable price.

**120 Legal Services Board members and employees**

- (1) On the close of the day before the transition date, the term of appointment of every person who is a member of the Legal Services Board expires.
- (2) No member of the Legal Services Board is entitled to compensation as a result of the expiry under this section of his or her term of office.
- (3) No person employed by the Legal Services Board on the day before the transition date is entitled to compensation as a result of the reconstitution and renaming of the Board by this Act.

Compare: 1998 No 106 s 3

**121 Effect of reconstitution of Board**

- (1) On and after the transition date, every reference in any enactment (other than this Act), or in any instrument or register, to the Legal Services Board must, if the context requires, be construed as a reference to the Legal Services Agency.

- (2) Except as expressly provided by this Act, the renaming and reconstituting of the Legal Services Board by this Act in no way affects any property, powers, authorities, or liabilities of the Legal Services Board, or any legal or other proceedings instituted or to be instituted by or against the Legal Services Board.

Compare: 1990 No 126 ss 20(2), 34

## **122 District Legal Services Committees and District Subcommittees**

- (1) Every District Legal Services Committee and every District Subcommittee ceases to exist at the close of the day before the transition date.
- (2) No member of a District Legal Services Committee or of a District Subcommittee is entitled to compensation as a result of those committees ceasing to exist.

## **123 Appeals under section 63 of former Act**

- (1) Despite the repeal of the former Act, but subject to section 124,—
- (a) the Legal Aid Review Authority established by the former Act continues after the transition date as if that Act had not been repealed; and
- (b) the members of the Authority at the close of the day before the transition date remain members of the Authority unless or until they cease to be members in accordance with section 145(2) of the former Act.
- (2) Despite the repeal of the former Act, the Authority must hear and determine every appeal under section 63 of that Act that was, or could have been, made before the transition date, as if the former Act had not been repealed.
- (3) Sections 135 to 144 of the former Act continue to apply to appeals under section 63 of that Act as if those sections had not been repealed.
- (4) If there are any appeals under section 63 of the former Act that have not, by the close of 30 June 2001, been finally disposed of by the Authority,—

- (a) the Authority must forward the file relating to the appeal to the Convenor of the Review Panel; and
- (b) the Convenor must appoint a 3-person team to review the decision that is the subject of the appeal; and
- (c) the decision is to be treated for all purposes as a decision of the Agency; and
- (d) the Review Panel must deal with the appeal as if it were a review under Part 3.

**124 Legal Aid Review Authority abolished**

- (1) On the close of 30 June 2001, the Legal Aid Review Authority ceases to exist, and the term of appointment of every member of the Authority expires.
- (2) No member of the Legal Aid Review Authority is entitled to compensation as a result of the expiry under this section of his or her term of office.
- (3) All assets and liabilities of the Legal Aid Review Authority, and all records of the Authority, vest in the Agency at the close of 30 June 2001.

**125 Applications for legal aid for certain criminal matters continue to be dealt with by Registrars**

- (1) Despite section 12, during the period starting on the transition date and ending with the close of 31 October 2001 (the **transition period**), applications for legal aid in relation to criminal matters must be made in the prescribed manner to,—
  - (a) in the case of proceedings in the High Court, the Registrar of that court; or
  - (b) in the case of proceedings in a District Court, the Registrar of the relevant District Court; or
  - (c) in the case of an application in respect of a matter referred to in section 6(c), the Registrar of the District Court nearest to the prison in which the applicant is detained, or place where the applicant resides, as the case may be.
- (2) After the transition date, applications for legal aid in relation to criminal matters where the proceedings are to be held in the Court of Appeal or the Judicial Committee of the Privy

Council must be made in accordance with section 12. (This subsection is for the avoidance of doubt.)

- (3) A Registrar to whom an application is made under subsection (1) has all the powers and duties of the Agency under Part 2, and any obligation under Part 2 that is owed by any person to the Agency in respect of an application for legal aid is owed to the Registrar.
- (4) A Registrar exercising any power under Part 2, or carrying out any duty under that Part, must, as far as possible, exercise the power or carry out the duty in the manner that the Agency would; and in order to assist Registrars in this, the Agency must provide Registrars with guidance on how to exercise their powers and carry out their duties during the transition period.
- (5) If an application or grant of legal aid, whether made before or after the transition date, relates to a case that is, in the Agency's view, a complex case, then the Agency may, of its own motion or at the request of a Registrar, determine the maximum grant and any amendment to a maximum grant relating to that case.
- (6) Section 16 of the former Act (which relates to reviews of decisions of Registrars) continues to apply to decisions of Registrars, whether the decision under review was made before or after the transition date, as if that section had not been repealed.
- (7) In this section, **Registrar** means the Registrar of any court; and includes a Deputy Registrar.

Section 125(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

### *Repeals, revocations, and amendments*

#### **126 Legal Services Act 1991 repealed**

- (1) The Legal Services Act 1991 is repealed.
- (2) The following enactments are consequentially repealed:
  - (a) Legal Services Amendment Act 1992:
  - (b) Legal Services Amendment Act 1994:
  - (c) Legal Services Amendment Act 1995:
  - (d) Legal Services Amendment Act 1997.

**127 Consequential repeals and revocations**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) The Legal Aid Districts Notice 1970 (SR 1970/54) is consequentially revoked.
- (3) The following regulations are consequentially revoked:
  - (a) Legal Services Regulations 1991 (SR 1991/293):
  - (b) Legal Services Regulations 1991, Amendment No 1 (SR 1992/125):
  - (c) Legal Services Regulations 1991, Amendment No 2 (SR 1993/255):
  - (d) Legal Services Regulations 1991, Amendment No 3 (SR 1995/24):
  - (e) Legal Services Amendment Act Commencement Order 1996 (SR 1996/145):
  - (f) Legal Services Regulations 1991, Amendment No 4 (SR 1996/153).

**128 Consequential amendments to other enactments in Schedule 3**

The Acts listed in Schedule 3 are amended in the manner indicated in that schedule.

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**Schedule 1**

s 4(1)

**Definition of income and disposable capital**

Schedule 1: substituted, on 1 March 2007, by section 45 of the Legal Services Amendment Act 2006 (2006 No 5).

**1 Definitions**

In this schedule, unless the context otherwise requires,—

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

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

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

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

**2 Meaning of income**

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

- (a) means the person's total gross income during the 12 months immediately before the application for legal aid, or during such other period of 12 months as the Agency considers appropriate in the circumstances; and
- (b) has the meaning given to it in paragraphs (a) to (e) of the definition of income in section 3(1) of the Social Security Act 1964; and
- (c) includes a benefit payable under Part 1 of the Social Security Act 1964; but does not include—
  - (i) an orphan's benefit payable under section 28 of the Social Security Act 1964; or
  - (ii) an unsupported child's benefit payable under section 29 of that Act; or
  - (iii) a child disability allowance payable under section 39A of that Act; or
  - (iv) an emergency benefit payable under section 61 of that Act; or



- (v) an accommodation supplement payable under section 61EA of that Act; or
  - (vi) a special benefit fixed under section 61G of that Act; or
  - (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
- (e) includes any tax credit or amount received under subparts MA to MF and MZ of the Income Tax Act 2007 or subpart KD of the Income Tax Act 2004 or subpart KD of the Income Tax Act 1994 or under Part 11A of the Income Tax Act 1976.
- (2) Subclause (1) is subject to clauses 4 and 5.

Schedule 1 clause 2(1)(e): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### 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;
  - (b) if the person has an interest in a motor vehicle used principally as that person's means of transport for domestic purposes, the amount of the value of that interest;
  - (c) the amount of the value of the person's household furniture, household appliances, personal clothing, and tools of trade;
  - (d) the amount of the contingent liabilities of the person that may mature within the next 6 months;
  - (e) the amount of the actual debts of the person, other than those that are secured and have been taken into account in determining the amount of the person's assets;
  - (f) the value of the subject matter of the proceedings, unless the Agency determines a proportion of that value that

should be included in the assessment of the person's total assets:

- (g) the value of any property that is the subject of a restraining order under the Criminal Proceeds (Recovery) Act 2009.

- (2) This clause is subject to clauses 4 and 5.

Schedule 1 clause 3(1)(f): substituted, on 1 December 2009, by section 210 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

Schedule 1 clause 3(1)(g): added, on 1 December 2009, by section 210 of the Criminal Proceeds (Recovery) Act 2009 (2009 No 8).

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

- (1) Any resources of a person's spouse or partner must be treated as that person's resources unless—
  - (a) the person is living apart from his or her spouse or partner; or
  - (b) the person and his or her spouse or partner have contrary interests in the matter to which the proceedings relate; or
  - (c) regulations 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.
- (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—
  - (a) that parent is living apart from, or does not have responsibility for the day-to-day care of, the applicant; or
  - (b) the applicant is supporting himself or herself without financial assistance from that parent.
- (4) Where an application for legal aid for a civil matter is made by a minor aged 16 years or over, the Agency may treat the resources of the following persons as resources of the applicant:
  - (a) any person who, under any agreement or court order, is liable wholly or partially to maintain the applicant; or

- (b) any parent, foster parent, or step-parent with whom the applicant is living.
- (5) Where an application for legal aid for a civil matter is made by a minor, the 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.
- (6) Without limiting the ways in which persons may have a contrary interest in a matter, person A and person B have a **contrary interest** in a matter if—
  - (a) person A applies for or is granted legal aid in connection with proceedings against person B under the Domestic Violence Act 1995; and
  - (b) either—
    - (i) person A is a minor and person B is person A's parent; or
    - (ii) person A is the spouse or partner of person B.

## 5 Resources relating to 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.
- (2) The income of the applicant includes any rent derived from Maori land or interests in Maori land.
- (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.
- (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.

**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
  - (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.
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**Schedule 2**  
**Provisions applying to Board and  
members**

s 96

Board membership  
*[Repealed]*

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

**1 Members' appointment**

*[Repealed]*

Schedule 2 clause 1: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**2 Members ceasing to hold office**

*[Repealed]*

Schedule 2 clause 2: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**3 Remuneration and expenses of Board members**

*[Repealed]*

Schedule 2 clause 3: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**4 Members not in service of Crown**

*[Repealed]*

Schedule 2 clause 4: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Procedures of Board

*[Repealed]*

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

**5 Chairperson**

*[Repealed]*

Schedule 2 clause 5: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**6 Meetings***[Repealed]*

Schedule 2 clause 6: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**7 Quorum***[Repealed]*

Schedule 2 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**8 Proceedings not invalidated by vacancy***[Repealed]*

Schedule 2 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**9 Committees***[Repealed]*

Schedule 2 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**10 Delegations***[Repealed]*

Schedule 2 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**11 Contracts***[Repealed]*

Schedule 2 clause 11: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**12 Conflict of interest***[Repealed]*

Schedule 2 clause 12: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## Employees

### 13 Board to appoint chief executive

- (1) The Board must from time to time appoint a chief executive of the Agency, on terms and conditions agreed between the Board and the person appointed.
- (2) Subclause (1) is subject to section 117 of the Crown Entities Act 2004.

Schedule 2 clause 13(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### 14 Other employees

*[Repealed]*

Schedule 2 clause 14: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### 15 Certain State Sector Act 1988 provisions apply

*[Repealed]*

Schedule 2 clause 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### 16 Superannuation

- (1) *[Repealed]*
- (2) Any person who, immediately before becoming an employee of the Agency is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is deemed for the purpose of that Act to be employed in the Government service so long as he or she continues to be an employee of the Agency.
- (3) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the Agency were Government service.
- (4) Nothing in subclause (1) entitles a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (5) For the purposes of applying the Government Superannuation Fund Act 1956, the chief executive of the Agency is the **controlling authority**.

Schedule 2 clause 16(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

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**Schedule 3**  
**Enactments amended**

s 128

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

*Amendment(s) incorporated in the Act(s).*

**Criminal Investigations (Blood Samples) Act 1995 (1995 No 55)**

*Amendment(s) incorporated in the Act(s).*

**Criminal Justice Act 1985 (1985 No 120)**

*Amendment(s) incorporated in the Act(s).*

**Criminal Justice Amendment Act 1993 (1993 No 43)**

*Amendment(s) incorporated in the Act(s).*

**District Courts Act 1947 (1947 No 16)**

*Amendment(s) incorporated in the Act(s).*

**Immigration Amendment Act 1991 (1991 No 113)**

*Amendment(s) incorporated in the Act(s).*

**Judicature Act 1908 (1908 No 89)**

*Amendment(s) incorporated in the Act(s).*

**Law Practitioners Act 1982 (1982 No 123)**

*Amendment(s) incorporated in the Act(s).*

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

*Amendment(s) incorporated in the Act(s).*

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

*Amendment(s) incorporated in the Act(s).*

**Public Finance Act 1989 (1989 No 44)**

*Amendment(s) incorporated in the Act(s).*

**Summary Proceedings Act 1957 (1957 No 87)**

*Amendment(s) incorporated in the Act(s).*

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

*Amendment(s) incorporated in the Act(s).*

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**Schedule 4**  
**Specified enactments**

s 9(5)

Schedule 4: added, on 1 March 2007, by section 46 of the Legal Services Amendment Act 2006 (2006 No 5).

Adoption Act 1955

Adult Adoption Information Act 1985

Alcoholism and Drug Addiction Act 1966

Care of Children Act 2004

Child Support Act 1991

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

Mental Health (Compulsory Assessment and Treatment) Act 1992

Protection of Personal and Property Rights Act 1988

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## Legal Services Amendment Act 2006

Public Act 2006 No 5  
Date of assent 9 April 2006  
Commencement see section 2

### 1 Title

This Act is the Legal Services Amendment Act 2006.

### 2 Commencement

- (1) This Act (except sections 30(2), 31, 32, 33, and 43) comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) Sections 30(2), 31, 32, 33, and 43 come into force on the day after the date on which this Act receives the Royal assent.

Section 2(1): Legal Services Amendment Act 2006 (except sections 30(2), 31, 32, 33, and 43) brought into force, on 1 March 2007, by the Legal Services Amendment Act 2006 Commencement Order 2006 (SR 2006/179).

## Part 2 Transitional provisions

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

- (1) In this section and section 48, **commencement date** means the commencement date of the Legal Services Amendment Act 2006.
- (2) The provisions of the Legal Services Amendment Act 2006 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 48.
- (3) Sections 40 and 41 of the principal Act (as substituted by section 28 of the Legal Services Amendment Act 2006) 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 43 of the Legal Services Amendment Act 2006) applies to all charges created by or under the Legal Aid Act 1969.

**48 Transitional provisions in relation to providers of legal services, etc**

- (1) Section 68 of the principal Act (as substituted by section 34 of the Legal Services Amendment Act 2006) 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.
  - (2) Section 72A of the principal Act (as inserted by section 35 of the Legal Services Amendment Act 2006) and section 73 of the principal Act (as substituted by section 36 of the Legal Services Amendment Act 2006) 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.
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## Legal Services Amendment Act 2009

Public Act 2009 No 69  
Date of assent 17 December 2009  
Commencement see section 2

### 1 Title

This Act is the Legal Services Amendment Act 2009.

### 2 Commencement

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

## Part 2 Transitional provisions

### 10 Transitional provisions

- (1) In this section, **commencement date** means the commencement date of the Legal Services Amendment Act 2009.
  - (2) The provisions of the Legal Services Amendment Act 2009 apply only to applications for legal aid made on or after the commencement date.
  - (3) Section 36A of the principal Act (as inserted by section 8 of the Legal Services Amendment Act 2009) applies to grants of legal aid only if the application for legal aid to which the grant relates was made on or after the commencement date.
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## Contents

- 1 General
  - 2 Status of reprints
  - 3 How reprints are prepared
  - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
  - 5 List of amendments incorporated in this reprint (most recent first)
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## Notes

### **1** *General*

This is a reprint of the Legal Services Act 2000. The reprint incorporates all the amendments to the Act as at 1 July 2011, as specified in the list of amendments at the end of these notes. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

### **2** *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3** *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted.

For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)



- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

Legal Services Act 2011 (2011 No 4): section 145  
Legal Services Amendment Act 2009 (2009 No 69)  
Immigration Act 2009 (2009 No 51): section 406(1)  
Criminal Proceeds (Recovery) Act 2009 (2009 No 8): sections 209, 210  
Income Tax Act 2007 (2007 No 97): section ZA 2(1)  
Weathertight Homes Resolution Services Act 2006 (2006 No 84): section 127(4)  
Housing Restructuring and Tenancy Matters (Information Matching) Amendment Act 2006 (2006 No 34): section 5(2)(e)  
Legal Services Amendment Act 2006 (2006 No 5)  
Lawyers and Conveyancers Act 2006 (2006 No 1): section 348  
Prisoners' and Victims' Claims Act 2005 (2005 No 74): sections 66, 67, 70  
Crown Entities Act 2004 (2004 No 115): section 200

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Care of Children Act 2004 (2004 No 90): section 151  
Corrections Act 2004 (2004 No 50): section 206  
Legal Services Amendment Act 2003 (2003 No 81)  
Supreme Court Act 2003 (2003 No 53): section 48(1)  
Weathertight Homes Resolution Services Act 2002 (2002 No 47): section 64  
Parole Act 2002 (2002 No 10): section 125  
Sentencing Act 2002 (2002 No 9): section 186  
Legal Services Amendment Act 2001 (2001 No 70)  
Local Electoral Act 2001 (2001 No 35): section 151  
Property (Relationships) Amendment Act 2001 (2001 No 5): section 64(2)

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