



MINISTRY OF  
**JUSTICE**  
*Tāhū o te Ture*

# Legal Aid Services Grants Handbook

February 2023

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# Legal Services Act 2011

The Legal Services Act 2000 established the Legal Services Agency as a Crown entity on February 1, 2001 and was amended effective 1 March 2007. The Legal Services Act 2011 (LSA) came into force on 1 July 2011 and disestablished the Legal Services Agency. It established the Secretary for Justice's responsibilities for Legal Aid. Under the direction of the Minister and the Secretary, the Legal Services Commissioner is responsible for granting legal aid.

## Transitional policy and procedures

Section 145 of the Legal Services Act 2011 (the Act) repealed the Legal Services Act 2000 and took effect from 1 July 2011. Pursuant to s 132 of the Act legal aid granted by the former Act will not be affected by the repeal and will apply as if aid had been granted under the 2011 Act.

## About the Legal Services Commissioner

The functions of the Legal Services Commissioner as set out in s 71 of the Act are to:

- grant legal aid in accordance with the Act and the regulations
- determine legal aid repayments
- assign a provider of legal aid services or specified legal services
- decide the allocation of cases, oversee the conduct of legal proceedings and manage their performance in relation to salaried lawyers
- carry out any other function conferred on the Commissioner by the Minister, by the Secretary or by or under this Act or any other enactment.

## Helping legal aid applicants find a lawyer

Legal aid staff will refer callers to the list of lawyers on the Ministry of Justice [website](#) or provide a few names of local legal aid lawyers without showing any preferences.

For criminal matters, the current rotational assignment process for PAL1 and PAL2 cases will be explained. The above process will be referred to where the caller is seeking a preferred lawyer for a case requiring a PAL3 or PAL4 provider.

## Where to send applications

Grants staff process applications and are supported by a team of Technical Coaches and a Solicitor (an experienced senior lawyer). The table below sets out where to send applications.

[Refer to our website](#) for the location and contact information of each office.



Types of proceedings	Regions – courts
<b>Auckland legal aid office</b>	
<ul style="list-style-type: none"> <li>• Criminal, including Court of Appeal and Supreme Court cases</li> <li>• Criminal Cases Review Commission</li> <li>• Family, including Court of Appeal and Supreme Court cases</li> <li>• ACC</li> <li>• Children worker’s exemption appeals</li> <li>• Employment</li> <li>• Public Protection Orders</li> <li>• Victims’ Orders against Violent Offenders</li> <li>• Civil (General), including Court of Appeal and Supreme Court cases</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Auckland</b> - Auckland Central, Manukau, North Shore, Papakura, Pukekohe, Waitakere</li> <li>• <b>Northland</b> - Dargaville, Kaikohe, Kaitaia, Whangarei</li> </ul>
<ul style="list-style-type: none"> <li>• Immigration, including Court of Appeal and Supreme Court cases</li> <li>• Refugee, including Court of Appeal and Supreme Court cases</li> </ul>	<b>All regions</b>
<b>Wellington legal aid office</b>	
<ul style="list-style-type: none"> <li>• Criminal, including Court of Appeal and Supreme Court</li> <li>• Criminal Cases Review Commission</li> <li>• Family, including Court of Appeal and Supreme Court Cases</li> <li>• ACC</li> <li>• Children worker’s exemption appeals</li> <li>• Employment</li> <li>• Public Protection Orders</li> <li>• Victims’ Orders against Violent Offenders</li> <li>• Civil (General), including Court of Appeal and Supreme Court cases</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Bay of Plenty</b> - Opotiki, Rotorua, Taupo, Tokoroa, Tauranga, Whakatane, Waihi</li> <li>• <b>Canterbury</b> - Ashburton, Christchurch, Timaru</li> <li>• <b>Gisborne</b> - Gisborne, Ruatoria, Wairoa</li> <li>• <b>Hawkes Bay</b> - Dannevirke, Hastings, Napier, Waipukurau</li> <li>• <b>Manawatu/Whanganui</b> - Levin, Marton, Ohakune, Palmerston North, Taihape, Whanganui</li> <li>• <b>Nelson/Marlborough</b> - Blenheim, Kaikoura, Nelson</li> <li>• <b>Otago/Southland</b> - Alexandra, Dunedin, Gore, Invercargill, Oamaru, Queenstown</li> <li>• <b>Taranaki</b> - Hawera, New Plymouth</li> <li>• <b>Waikato</b> - Hamilton, Huntly, Morrinsville, Taumarunui, Thames, Te Awamutu, Te Kuiti</li> <li>• <b>Wellington</b> - Hutt Valley, Masterton/Wairarapa, Porirua, Wellington</li> <li>• <b>West Coast</b> - Greymouth, Westport</li> </ul>
<ul style="list-style-type: none"> <li>• Historic abuse claims (HAC)</li> <li>• Waitangi Tribunal</li> </ul>	<b>All regions</b>

## Returning applications

If an application is incomplete and the missing information is essential to make a decision, the form will be returned to the provider or applicant for completion, advising them of what is required.

The provider and/or applicant must resubmit the full application form (including the requested information) in a new email.

### **Incorrect details on application forms**

If an application is submitted with proof of income and it is clear that the calculations on the application form are incorrect, then grants staff will assess the client's financial circumstances based on the proof provided.

Providers and applicants will be notified if the amendments have a negative effect on the legal aid decision.

The details on the original application form will not be amended. It is acknowledged that the applicant and lead provider have signed the statutory declaration indicating that the details contained in the form are true and correct.

## Urgent matters

Urgent matters are those for which there is a critical date in a court timetable or deadline to be met which may not be met if normal office procedures and timeliness standards are followed. The legal aid office will confirm whether urgent action is required and prioritise it accordingly.

## Returned mail

When correspondence sent to a client is returned, the letter(s) are disposed of. We can only action a change to the client's address details if requested by the client or provider.

## Active files with no activity

It is important for legal aid financial planning and auditing that open files with no activity for an extended period are finalised as soon as possible as they impact on the ability to forecast legal aid expenditure.

All open files with no activity for the last nine months will be finalised unless there are sufficient reasons to keep the file open. Providers will be given the opportunity to provide an update on the status of the case and to address any invoices and final repayments.

# Prescribed manner

## Applications for legal aid

Applications for legal aid that are not submitted in the prescribed manner, or are incomplete, as indicated in the table below, will not be rejected, but will be **returned** to the provider or applicant for completion.

Any required or missing information will be **requested** before any decision is made.

Law type	Prescribed manner	Completed
Family	<ul style="list-style-type: none"> <li>Submitted on the family and civil application form</li> <li>Signed and dated by applicant and preferred provider @</li> <li>Information provided to identify what aid is being sought for</li> </ul>	<ul style="list-style-type: none"> <li>All required questions answered</li> <li>All required documentation attached/provided</li> <li>Why legal aid should be granted is addressed</li> <li>Lead provider section completed</li> </ul>
Mental Health	<ul style="list-style-type: none"> <li>Submitted on the family and civil application form</li> <li>Signed and dated by preferred lawyer and applicant @ or signed and dated by preferred lawyer</li> <li>Information provided to identify what aid is being sought for</li> </ul>	<ul style="list-style-type: none"> <li>All required questions answered to the extent practicable</li> <li>All required documentation attached/provided to the extent practicable</li> <li>Lead provider section completed</li> </ul>
Civil	<ul style="list-style-type: none"> <li>Submitted on the family and civil application form</li> <li>Signed and dated by applicant preferred provider @</li> <li>Information provided to identify what aid is being sought for</li> </ul>	<ul style="list-style-type: none"> <li>All required questions answered</li> <li>All required documentation attached/provided</li> <li>Prospects of success addressed</li> <li>Lead provider section completed</li> <li>Must be submitted by a listed provider who is approved for the appropriate category</li> </ul>
Criminal	<ul style="list-style-type: none"> <li>Submitted on the criminal legal aid application form (usually filled out with assistance of a duty lawyer or PDLA lawyer)</li> <li>Signed by applicant unless duty lawyer confirms applicant unable to sign due to:               <ul style="list-style-type: none"> <li>Mental health difficulties</li> <li>Court security, or</li> <li>Appearing via AVL</li> </ul> </li> <li>Details of charges</li> </ul>	<ul style="list-style-type: none"> <li>All required questions answered</li> <li>All required documentation attached/provided including</li> <li>Interests of justice provided (if required)</li> </ul>
Waitangi	<ul style="list-style-type: none"> <li>Submitted on a Form 14</li> <li>Signed by applicant and preferred provider @</li> </ul>	<ul style="list-style-type: none"> <li>All required questions answered</li> <li>All required documentation attached/provided (exception is the s49</li> </ul>

Law type	Prescribed manner	Completed
		report which legal aid requests from the Tribunal) <ul style="list-style-type: none"> <li>Lead provider section completed</li> </ul>

@ An electronic signature can be accepted where:

- the provider's name or signature is hand-written or typed in the signature box, and
- the document was sent electronically from the provider's recognised email address (either the provider's email address for legal aid matters or an email address recognised by the Secretary as belonging to the provider's firm)
- the client's electronic signature may be accepted if they have used the electronic signature feature in the editable PDF - a signature or their name is recorded in the applicant signature panel.

Ensure that each application is:

- filed before the matter has been finally disposed of by a Court or tribunal pursuant to s 14(1)(c) of the Act or include an explanation for any delay under s 14(2).

### Amendments and invoices

Where requests for amendments to legal aid grants, estimates or invoices are required by the Secretary of Justice (the Secretary) to be submitted in a **prescribed manner**, they will be **rejected** where they are not in the prescribed manner as indicated below.

Where they are **incomplete**, as indicated below, the additional required information will be **requested** before any decision may be made.

**Note:** If the document is not signed, it must be sent electronically from the provider's recognised email address (either the provider's email address for legal aid matters or an email address recognised by the Secretary as belonging to the provider's firm).

### Amendments/estimate:

Law type	Prescribed manner	Completed
Family	<ul style="list-style-type: none"> <li>Form 52 - <a href="#">Ministry website</a></li> <li>Signed by lead provider @ ^</li> <li>Customer and case identifiable*</li> </ul>	<ul style="list-style-type: none"> <li>All required sections are completed</li> <li>All required information to make a decision is included</li> </ul>
Civil	<ul style="list-style-type: none"> <li>Form 52 - <a href="#">Ministry website</a></li> <li>Signed by lead provider @ ^</li> <li>Customer and case identifiable*</li> </ul>	<ul style="list-style-type: none"> <li>All required sections are completed</li> <li>All required information to make a decision is included</li> </ul>
Criminal	<ul style="list-style-type: none"> <li>Form 51 - <a href="#">Ministry website</a></li> <li>Signed by lead provider @ ^</li> <li>Customer and case identifiable*</li> </ul>	<ul style="list-style-type: none"> <li>All required sections are completed</li> <li>All required information to make a decision is included</li> </ul>

Law type	Prescribed manner	Completed
Waitangi	<ul style="list-style-type: none"> <li>Form 15 - <a href="#">Ministry website</a></li> <li>Signed by lead provider@ ^</li> <li>Confirmation/s ticked</li> <li>Customer and case identifiable*</li> </ul>	<ul style="list-style-type: none"> <li>All required sections are completed</li> <li>All required information to make a decision is included</li> </ul>

@ An electronic signature can be accepted where:

- the provider's name or signature is hand-written or typed in the signature box, and
- the document was sent electronically from the provider's recognised email address (either the provider's email address for legal aid matters or an email address recognised by the Secretary as belonging to the provider's firm).

^ An amendment may be signed on behalf of the lead provider by the provider's nominated 'alternate' who is named in the lead provider's contract to provide legal services, when the 'alternate' is acting during a period when the lead provider is unavailable.

\* This includes when the customer is identifiable even though the legal aid number/name is wrong on the form

### Invoices:

Law type	Prescribed manner	Complete
Family	<ul style="list-style-type: none"> <li>Correct form for the case specified on the <a href="#">Ministry website</a></li> <li>Name of lead provider, amount claimed, GST number, and invoice date</li> <li>Customer and case identifiable *</li> </ul>	<ul style="list-style-type: none"> <li>All required sections are completed</li> <li>All required information to make a decision is included</li> </ul> <p>For grants approved from 2 September 2013 to 31 December 2022, the user charge has been deducted</p>
Civil	<ul style="list-style-type: none"> <li>Correct form for the case specified on the <a href="#">Ministry website</a></li> <li>Name of lead provider, amount claimed, GST number, and invoice date</li> <li>Customer and case identifiable *</li> </ul>	<ul style="list-style-type: none"> <li>All required sections are completed</li> <li>All required information to make a decision is included</li> <li>For grants approved from 2 September 2013 to 31 December 2022, the user charge has been deducted</li> </ul>
Criminal	<ul style="list-style-type: none"> <li>Correct form for the case specified on the <a href="#">Ministry website</a></li> <li>Name of lead provider, amount claimed, GST number, and invoice date</li> <li>Customer and case identifiable *</li> </ul>	<ul style="list-style-type: none"> <li>All required sections are completed</li> <li>All required information to make a decision is included</li> </ul>
Waitangi	<ul style="list-style-type: none"> <li>Form 16</li> <li>Name of lead provider, amount claimed, GST number, and invoice date</li> <li>Customer and case identifiable *</li> </ul>	<ul style="list-style-type: none"> <li>All required sections are completed, including required confirmations are checked</li> <li>All required information to make a decision is included</li> </ul>

\* This includes when the customer is identifiable even though the legal aid number/name is wrong on the form

# Eligibility for civil and family legal aid

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There are four key decisions for establishing eligibility.

- eligible proceeding
- eligible applicant
- financially eligible
- sufficient merit

## Eligible proceedings

THE KEY SECTIONS OF THE LEGAL SERVICES ACT 2011 (THE ACT) ARE:

- section 4: Interpretation
- section 7: Proceedings for which legal aid may be granted: civil matters
- section 10: When legal aid may be granted: civil matters
- section 11: When legal aid may be granted: civil matters continued.

### Application made after a matter has been disposed of

An application is deemed to be made the date it is received by Legal Aid Services. The day a matter is finally disposed of is the date the court issues its final judgment.

**Note:** If the substantive judgment invites submissions as to costs, then the subsequent date of any resulting costs judgment becomes the final disposition date.

If the application has been faxed or hand delivered on the disposal date any time up to midnight then the application is deemed to have been received before the disposal date.

If the application is received more than 15 working days after the disposal date then the application will be rejected under s 14(1)(c) of the Act.

If the application is received within 15 working days after the disposal date the provider will need to address what special circumstances caused the delay and whether reasonable steps were taken to apply before the disposal date. If these requirements are not met then aid will be refused under s 14(2)(b) of the Act.

Examples of circumstances which may not be accepted are that the provider:

- forgot
- gave other work priority
- was otherwise too busy
- was on holiday or
- was indisposed and his/her work was not allocated to another member of the law firm.

### Proceedings eligible under section 7(1)(a) - (d) or (f) - (o) of the Act

- hearings before the District Court, Family Court, High Court, Court of Appeal or Supreme Court
- an application in a Youth Court under Part 7 of the Oranga Tamariki Act 1989, (child or young person in care of the chief executive of a social or cultural service agency) or for the review of a determination or order made by a Youth Court in proceedings of that type
- a claim to be heard by the Waitangi Tribunal
- a claim to be heard before the Social Security Appeal Authority, or Tenancy Tribunal, or body established under the Public and Community Housing Management Act 1992 to hear appeals under ss 132 to 135 of that Act or proceedings before any body established under that Act to hear appeals under ss 183 to 188 of that Act
- the following immigration and refugee matters:
  - appeals to the Immigration and Protection Tribunal 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, or against liability for deportation arising under s 162 of the Immigration Act 2009
  - the processing, under Part 5 of the Immigration Act 2009, of any claim for recognition as a refugee or a protected person
  - an application made under s 316 or 324 of the Immigration Act 2009 and is dealt with before the District Court or High Court
  - an appeal or review in respect of s 7(1)(j) or (k) applies or
  - under or in relation to the Immigration Act 1987 for which legal aid could have been granted under s 7(1)(j), (k), (l) and (m) as in force before their repeal by the Immigration Act 2009.
- an application, submission, or appeal under the Resource Management Act 1991 or to the Environment Court
- an application, submission, or appeal to any Council or body where an appeal in relation to its decision lies to the Environment Court
- proceedings before the tribunal under the Canterbury Earthquakes Insurance Tribunal Act 2019
- hearings before an adjudicator under the Weathertight Homes Resolution Services Act 2006
- hearings before a tribunal in relation to one or more victims' claims under Part 2, Subpart 2 of the Prisoners' and Victims' Claims Act 2005
- appeal proceedings against the decision to revoke or deny exemptions for Children's Workers under Part 3 of the Children's Act 2014

If the proceedings are not heard in any of the above forums, consideration must be given to s 7(1)(e) of the Act.

### Proceedings which may be eligible under section 7(1)(e) of the Act

Proceedings which fall within one of the eligible forums listed below, must satisfy an additional test to be eligible for legal aid:

- that the case is one where legal representation is required (having regard to the nature of the proceedings and the applicant's personal interest), **and**
- the applicant would suffer substantial hardship if aid were not granted.

The eligible forums are the:

- Maori Land Court

- Maori Appellate Court
- Employment Court
- Employment Relations Authority or
- Any administrative tribunal or judicial authority (a body exercising an adjudicative function or power derived from the state), including the following:
  - Coroner’s Court
  - Mental Health Review Tribunal
  - Legal Aid Tribunal
  - ACC Review Tribunal
  - Human Rights Review Tribunal
  - Disciplinary Tribunals

Other eligible forums are those where aid is for a victim and the proceedings are to be heard by the Parole Board or a court.

**THE CRITERION FOR LEGAL REPRESENTATION CAN BE MET IF IT IS SHOWN THAT THE NATURE OF THE PROCEEDINGS:**

- require legal representation and argument, or
- a specific process is to be followed at the hearing, and
- the applicant is personally involved in the substantive matters that they don’t necessarily have to have a legal interest, and
- a successful resolution would have a real impact on the applicant.

**SUBSTANTIAL HARDSHIP IS A HIGHER THRESHOLD THAN MERE HARDSHIP. THIS CAN BE DEMONSTRATED BY FACTORS WHICH WILL:**

- cause suffering or create a difficult situation to endure (for example, it would put the applicant under considerable strain and it would have a long-term impact caused directly by not granting legal aid), and
- be partially or fully mitigated by a grant of aid to undertake legal proceedings and
- require an assessment of all the circumstances contributing to the applicant’s current situation including personal factors such as medical conditions, disability, and social considerations such as family arrangements and employment.

**Proceedings for which legal aid is not available under section 7(1)(e) of the Act**

**APPEALS TO A TRIBUNAL OR JUDICIAL AUTHORITY, FROM THE FOLLOWING TRIBUNALS AND AUTHORITIES, WILL NOT BE ELIGIBLE:**

- Waitangi Tribunal
- Social Security Appeal Authority
- Tenancy Tribunal
- A body established under s 63(1)(a)(i) of the Housing Restructuring and Tenancy Matters Act 1992 for appeals under s 62 of that Act
- Immigration and Protection Tribunal, in respect of a:
  - decision to decline to grant recognition as a refugee or a protected person
  - decision to cease to recognise a person as a refugee or protected person.
- A decision on liability for deportation arising under s 162 of the Immigration Act 2009.



#### PROCEEDINGS IN THESE ADMINISTRATIVE TRIBUNALS/JUDICIAL AUTHORITIES ARE NOT ELIGIBLE:

- United Nations Human Rights Committee
- Arbitration proceedings
- Disputes Tribunal
- District Law Society Costs Revision Committees
- Medical Council
- Independent Police Conduct Authority
- Psychologists' Professional Conduct Committee

#### Proceedings which may be eligible under s 7(4) of the Act

Under s 7(4) of the Act legal aid is not available for proceedings under Part 4 of the Family Proceedings Act 1980 (FPA), relating to the status of marriage. According to s 7(5)(e) of the Act legal aid is not available for proceedings under s 37 of the FPA. However, s 37 falls within Part 4 of the FPA.

**Note:** Section 7(5)(e) of the Act takes precedence over section 7(4) so aid may not be granted under any circumstances for proceedings under section 37 of the FPA.

Other matters under Part 4 may be considered if it can be shown that the case has some unusual complexity and the applicant would suffer substantial hardship if aid were not granted.

Unusual complexity can be demonstrated by presence of specialist reports, extensive research, multiple proceedings and/or a novel point of law. A case is not necessarily complex if the applicant has language difficulties or they lack knowledge of the New Zealand legal system.

#### Proceedings for which legal aid is not available under section 7(5) of the Act

Proceedings which involve the following will not meet the eligible proceedings test:

- realtor actions, in which the Attorney-General is a party, to:
  - restrain an interference with a public right
  - compel the performance of a public duty, or
  - stop a public nuisance.
- election petitions under the Electoral Act 1993 (and incidental proceedings)
- petitions for inquiry under the Local Electoral Act 2001 (and incidental proceedings)
- proceedings under s 37 of the Family Proceedings Act 1980 (relating to dissolution of marriage) or appeals under that section
- appeals to the Immigration and Protection Tribunal:
  - against a decision concerning a residence class visa
  - on humanitarian grounds against liability for deportation under s 154 of the Immigration Act 2009
  - any appeal to the Removal Review Authority under Part 2 of the Immigration Act 1987
- proceedings before a Commission of Inquiry under the Commission of Inquiry Act 1908, except one established or appointed under another Act but deemed to be one under the Commissions of Inquiry Act.

### **Proceedings that could reasonably be brought in overseas jurisdiction**

According to s 10(4)(c) if the applicant is not in New Zealand and it is believed that the proceedings might reasonably be brought in a jurisdiction other than New Zealand then legal aid may be refused.

Legal aid may be granted where:

- the applicant's lawyer is approved as a lead provider in New Zealand and
- the proceedings cannot be reasonably brought in the overseas jurisdiction and
- all other eligibility criteria are met, particularly the cost of the proceedings in relation to the applicant's interest in them and financial eligibility (overseas assets will be valued in New Zealand currency).

### **If there is no proceeding but there is a legal dispute**

If no proceedings have been filed, drafted or contemplated, but legal services are required then aid may be granted if:

- there is an eligible proceeding under s 7 of the Act, and
- the application meets the financial and merits test under s 10 of the Act.

There must be a matter in dispute which can only be resolved using 'legal services' as defined in s 4 of the Act. If the matter cannot be resolved then there must be a real likelihood that it would be heard in one of the eligible forums.

Evidence of relevant correspondence and previous attempts to settle or a written explanation will be required.

'Legal services' include legal advice and representation with regards to resolution, pre-proceeding steps and effecting settlement. It is insufficient to state that the applicant has reasonable grounds.

# Eligible applicant

THE KEY SECTIONS OF THE ACT ARE:

- section 10: When legal aid may be granted: civil matters
- section 11: When legal aid may be granted: civil matters continued
- section 12: Other situations when legal aid refused or limited: civil matters
- section 15: Special provisions relating to minors and mentally disordered persons.

THE KEY REGULATIONS OF THE LEGAL SERVICES REGULATIONS 2011 (THE REGULATIONS) ARE:

- regulation 16: Application by minors
- regulation 17: Application by persons incapable of completing application because of mental or physical infirmity
- regulation 18: Application by non-residents.

Considerations will be made as discussed below.

## **Application made by a natural person**

The assumption is that aid is for the applicant, who is a living individual and an interested party.

The legal aid decision will be considered in this person's name, regardless of whether or not the application was made by a representative of that person. Communication will be to the person who is the legally aided person or representative, and their provider.

If an applicant dies after legal aid has been granted, appropriate steps will be taken to end/withdraw the grant.

## **Application made by a trustee corporation**

Aid may be approved under s 10(1)(b), subject to the remaining eligibility criteria, if the trustee corporation is concerned in the proceeding in a representative, fiduciary or official capacity, and one which is able to be defined by s 2(1) of the Administration Act 1969.

These include, but are not limited to:

- Public Trust
- Maori Trustee
- Tower Trust Ltd
- AMP Perpetual Trustee Company New Zealand Ltd
- PGG Trust Ltd
- New Zealand Permanent Trustees Ltd
- New Zealand Guardian Trust Co. Ltd.

The financial resources of the subject person will be taken into account pursuant to Schedule 1 clause 6 of the Act. The agent of the trustee corporation fills out the application form, but the grant will be in the subject person's name. Communication will be with the trustee corporation but will include the subject person's details.

### **Application made by a minor**

If an application is made on behalf of a minor aged under 16 years, then their representative must be a natural person 20 years or older with full mental capacity and the person's parent/guardian/custodial parent or next friend/guardian ad litem.

Legal aid will be granted in the name of the minor, but the application must be signed by their representative.

If an application is made on behalf of a minor over 16 years, then they can apply for legal aid in their own right.

### **Application made by mentally disordered or physically infirm**

If an application is made on behalf of a person who is mentally disordered, then their representative must be 20 years or older, with full mental capacity, and be the person's next friend/guardian ad litem.

Legal aid will be granted in the name of the subject person, but the application must be signed by the representative.

A responsible person (including an officer of Public Trust) who has sufficient knowledge of the applicant's affairs can make an application on behalf of a person who has a physical infirmity.

If an applicant is incapable of completing the application due to physical infirmity, the application should be accompanied by written confirmation from their lawyer:

- that the applicant is incapable of completing the application due to physical infirmity
- that the applicant has consented to the application being made on their behalf
- of the relationship between the applicant and the person who completed the application on behalf of the applicant.

### **Applications involving a group (body) of people**

Legal aid is not available if the application and proceedings involve a group of people and the applicant does not have a direct and personal interest over and above any direct collective interest of the group, pursuant to s 11 of the Act.

If the applicant does not have a direct and personal interest over and above the group interest above then aid can be considered as if the applicant were applying on their own behalf.

The exception is applications for a Waitangi Tribunal matter under s 47 where the provider must show that the applicant is a Maori and the claim in question is or will be submitted for the benefit of a group of Maori of which the applicant is a member.

If the application is on behalf of another kind of group of people, not covered by the previous definitions, or there are numerous persons with the same interest, or the applicant has the right to be joined with other parties as plaintiffs, legal aid may be available if it meets the requirements of s 12(3) to (6) of the Act.

### **Application made by a non-resident**

According to s 10(1)(a) of the Act the applicant does not have to be resident in New Zealand when making the application.

If the applicant is overseas and unable to sign the application, their lawyer may make the application. Their lawyer must state that the form is not signed by the applicant because of the above. The financial information sections must be completed.

However, if the applicant is overseas and the proceedings could be brought in an overseas jurisdiction, then legal aid will be refused as the proceeding will not be eligible under s 10(4)(c) of the Act.

### **Matters involving immigration decisions**

Legal aid is not available for some proceedings about a decision or matter under the Immigration Act 2009 pursuant to s 12(1) the Act. The applicant will need to provide confirmation of their visa or permit, country of residence and citizenship.

#### **AID MAY BE REFUSED WHERE:**

- the proceedings involve a decision under the Immigration Act 2009 in relation to a person who:
  - is unlawfully in New Zealand in terms of the Immigration Act 2009
  - is lawfully in New Zealand only by being the holder of a temporary entry class visa
  - is not in New Zealand and either:
    - is not a New Zealand citizen, or
    - does not hold a residence class visa granted under the Immigration Act 2009.
- the proceedings involve a decision or matter under the Immigration Act 1987 in relation to a person who:
  - was unlawfully in New Zealand, or
  - having not been granted legal aid for the purpose of any particular proceedings in New Zealand before the person arrived in New Zealand was unlawfully in New Zealand only by virtue of being the holder of a temporary or limited purpose permit.

#### **AID MAY BE AVAILABLE WHERE:**

- the proceedings involve a decision under the Immigration Act 1987 in relation to a person who was unlawfully in New Zealand and having not been granted legal aid for the purpose of any particular proceedings in New Zealand before the person arrived in New Zealand, was unlawfully in New Zealand only by virtue of being the holder of a temporary or limited purpose permit and for which a person was granted legal aid before 29 November 2010
- the proceedings are those specified in s 7(1)(j) to (m) of the Act.

### **Application made by victim of crime**

Legal aid is available for victims in the following circumstances:

- victims before the Victims' Special Claims Tribunal under Part 2 of the Prisoners' and Victims' Claims Act 2005, and

- victims of crime to attend a Parole Board hearing or coroner’s inquest, and
- the applicant for Victims’ Orders against Violent Offenders proceedings.

For attendance at a Parole Board hearing, the applicant for aid must provide confirmation that the Parole Board has granted leave for the victim to attend the hearing under s 49(4)(b) of the Parole Act 2002.

A victim is defined in s 4(1) of the Act as:

- a person who has had an offence committed against them by another, or
- a person who suffers a physical injury or loss or damage to property by an offence committed by another, or
- a parent or legal guardian of a victim who is a child or young person, provided the parent or guardian did not commit the offence, or
- a member of the immediate family (when the victim dies or is incapable of making the application as a result of an offence), provided the family member did not commit the offence.

An immediate family member of the deceased who applies for legal aid to attend a Coroner’s inquest must demonstrate that the Coroner has recognised that family member as its representative under s 22 of the Coroners Act 2006.

**Application made under the Criminal Proceeds (Recovery) Act 2009** Where an application is made under the Criminal Proceeds (Recovery) Act 2009, the applicant must be one of the following in order to be eligible for legal aid:

- a respondent in a restraining or forfeiture order application, or
- a person (other than the respondent) who claims an interest in a property sought to be forfeited under a civil forfeiture order.

**Protection of Personal and Property Rights Act 1988**

This table provides information on who is the applicant for legal aid and who's resources are assessed for Protection of Personal and Property Rights Act (PPPR) proceedings.

SITUATION	WHO IS THE LEGAL AID APPLICANT?	WHOSE RESOURCES SHOULD BE USED?	WHO SHOULD SIGN THE APPLICATION?
No existing PPPR Act orders or Enduring Power of Attorney (EPOA)	Person of full age and mental capacity Legal aid applicant	Legal aid applicant	Legal aid applicant
Where there is an existing order under PPPR Act appointing Legal aid applicant as 'representative'	Court appointed representative	Subject person's	Court appointed representative
Where there is an existing order under PPPR Act appointing a	Other party	Other party	Other party

representative but another or third party seeks legal aid			
Where there is an existing EPOA and the attorney (representative) seeks orders under PPPR Act	Attorney (representative)	Subject person's	Attorney (representative)
Where there is an existing EPOA and another or third party seeks legal aid	Other party	Other party	Other party

# Financial eligibility

THE RELEVANT SECTIONS OF THE ACT ARE:

- section 10: When legal aid may be granted: civil matters
- section 11: When legal aid may be granted: civil matters continued
- section 13: Legal aid not available to insured or indemnified persons
- section 4: Definition of income and disposable capital.

THE RELEVANT REGULATIONS ARE:

- regulation 5: Legal aid for civil matters: maximum levels of income
- regulation 6: Legal aid for civil matters: maximum levels of disposable capital
- regulation 7: Determining disposable capital: home equity allowance
- regulation 8: Determining capital and disposable capital: valuation of assets
- regulation 9: Resources that have been disposed of.

Aid will be refused if the applicant's income or disposable capital exceeds the thresholds set out in the regulations and there are no special circumstances demonstrated after having taken into account the likely cost of the proceedings and the applicant's ability to fund the proceedings if legal aid is not granted.

**Note:** Financial eligibility is not assessed where the applicant is a 'victim' of crime (as defined in s 4(1) of the Act), for proceedings specified under s 11(2). This includes:

- a victim's claim proceeding
- a coroner's inquest, or
- a parole board hearing.

If the matter involves Waitangi Tribunal proceedings then the above thresholds do not apply. Instead, it will need to be established that the group of Maori making a claim would suffer substantial hardship if aid is not granted.

If the applicant has insurance for, or is indemnified against legal proceedings, then aid may be refused under s 11 of the Act until all of their insurance or indemnification has been exhausted.

The following factors are considered when determining whether the applicant is financially eligible:

- the applicant's gross annual income
- the applicant's disposable capital
- the applicant's family size and composition
- the relevant maximum thresholds that apply
- whether there are any special circumstances
- whether insurance or indemnity funding is available, and
- whether other consideration on financial matters apply to the application.



# Income and capital assessment

## Family size and composition

The maximum thresholds for financial eligibility vary with the size and composition of the family. This includes the applicant's spouse or partner and their dependent children. Dependent relatives other than children are not included.

Dependent children do not have to live in the same home as the rest of the family. However, the applicant or their partner must be making regular payments towards the maintenance of the children.

The dependent children do not have to be the applicant's children. Children of a partner may be included, provided they are financially dependent on the combined income of the applicant and partner. If the child is accessing or eligible to access an income in their own right, such as a student allowance, then they would not be counted as being dependent.

## Relevant maximum thresholds

Regulation 5 sets the maximum thresholds for income:

IF THE APPLICANT....	THEN THE MAXIMUM LEVEL OF GROSS ANNUAL INCOME IS FROM 01/01/2023
Is single	\$27,393
Has <ul style="list-style-type: none"> <li>• a spouse/partner or</li> <li>• 1 dependent child</li> </ul>	\$43,380
Has <ul style="list-style-type: none"> <li>• a spouse/partner and 1 dependent child or</li> <li>• 2 dependent children</li> </ul>	\$62,381
Has <ul style="list-style-type: none"> <li>• a spouse/partner and 2 dependent children or</li> <li>• 3 dependent children</li> </ul>	\$70,888
Has <ul style="list-style-type: none"> <li>• a partner/spouse and 3 dependent children or</li> <li>• 4 dependent children</li> </ul>	79,214
Has <ul style="list-style-type: none"> <li>• a spouse/partner and 4 dependent children or</li> <li>• 5 dependent children</li> </ul>	88,552
Has <ul style="list-style-type: none"> <li>• a spouse/partner and more than 4 dependent children or</li> <li>• more than 5 dependent children</li> </ul>	\$96,744 (as for 5 dependent children) PLUS \$8,192 for each additional child

Regulation 6 sets the maximum thresholds for disposable capital:

IF THE APPLICANT....	THEN THEIR MAXIMUM LEVEL IS (DISPOSABLE CAPITAL)
Is single	\$3,500
Has <ul style="list-style-type: none"> <li>• a spouse/partner or</li> <li>• 1 or more dependent children</li> </ul>	\$5,000
Has equity in a home	The value of equity above \$80,000

### Financial eligibility reassessed

If the gross annual income and disposable capital are reassessed for eligibility during the life of a grant, then the financial thresholds current at the time of the reassessment will be applied, and not the thresholds used at the time of the original application. If the reassessment follows from a reconsideration or LAT review outcome, then the thresholds at the time the original decision was made will be applied.

### Special circumstances

If either of the relevant gross annual income or disposable capital thresholds has been exceeded, aid will be refused unless there are special circumstances pursuant to s 10(2) of the Act.

The special circumstances criterion is as follows:

- the likely cost of the proceedings such as the average cost of similar cases or range of costs if privately funded and the applicant's disposable income, and
- the applicant's ability to fund the proceedings if aid is not granted. For example, the applicant may own a home but their annual gross income falls within the eligibility threshold and they have evidence that they cannot obtain a bank loan, or that they cannot afford to pay for their own legal services.

### EXCEPTIONS

Only one consideration needs to be satisfied to demonstrate there are special circumstances, where the application is one of the following specified applications (pursuant to s 10(2A) of the Act):

- by a person who is a respondent to an application under the Public Safety (Public Protection Orders) Act 2014, or who is subject to an order under that Act
- by a person who is a respondent to an application under the Terrorism Suppression (Control Orders) Act 2019, or who is subject to an order under that Act
- proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992
- proceedings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003
- proceedings under the Protection of Personal and Property Rights Act 1988
- certain proceedings under the Family Violence Act 2018 (applicant only)
- certain proceedings under the Oranga Tamariki Act 1989

- proceedings involving or connected with the recognition of refugee or protected person status.

Where the application for legal aid is not in respect of a specific application, both considerations will need to be satisfied to demonstrate there are special circumstances.

**Note:** where an application is in respect of multiple proceedings, including at least one specified application, the limited special circumstances test, where only one of the two criteria needs to be met, will apply.

For example, where an application is for Care of Children (non-specified application) and Family Violence (Applicant) (specified application) proceedings, only one criterion needs to be met due to the Family Violence (Applicant) proceedings.

#### **Other factors related to financial circumstances**

Aid may be refused under s 10(4)(d)(iii) of the Act if it appears unreasonable or undesirable that the applicant should receive legal aid in the particular circumstances of the case. For example, there are other forums available for resolving the dispute with alternative funding, or there are other agencies with funding available for the proceedings.

#### **INSURANCE OR INDEMNIFICATION**

If the applicant has access to indemnification or insurance then they will need to show whether the dispute is covered by the policy, whether the benefits are personally available to the applicant, what services the provider will not fund, when the funding would stop and whether any benefits have already been accessed.

An applicant who has indemnification or insurance for the legal cost of bringing or defending any proceedings is not entitled to legal aid pursuant to s 13 of the Act unless it can be shown that the benefits available under the insurance or indemnification have been exhausted.

This is specifically noted in the confirmation section of the criminal, civil and family legal aid applications.

#### **INSUFFICIENT INFORMATION**

Aid may be refused if the Commissioner is unable to obtain full information concerning the applicant's financial affairs because of the default or failure of the applicant pursuant to s 10(4)(a) of the Act.

#### **THE REPAYMENT AMOUNT IS GREATER THAN THE LIKELY COST OF PROCEEDINGS**

Aid may be refused if the prescribed repayment amount will exceed the likely cost of the proceedings pursuant to s 10(4)(b) of the Act. The likely cost of similar cases, the provider's estimate of costs and the average range of costs if a case were privately funded would be considered.

# Arrears

## THE RELEVANT SECTION OF THE ACT IS:

- section 10: When legal aid may be granted: civil matters

Legal aid may be refused under s 10(3A) of the Act where an applicant has an amount payable from a previous legal aid grant in arrears, unless the application is a specified application, as defined in s 4(1) of the Act, or it appears to the Commissioner that the interests of justice require the application to be granted.

The interest of justice considerations are:

- why the applicant is in arrears, and
- the applicant's ability or inability to start making repayments.

Aid may not be refused where the application is in respect of at least one of the specified applications (pursuant to s 10(3A)(b) of the Act). Refer to [special circumstances](#).

Where an application contains multiple proceedings including at least one specified application, the arrears test will not apply. For example, if an application is in respect of Care of Children (non-specified application) and Family Violence (Applicant) (specified application) proceedings, the arrears test will not apply for either proceeding due to the Family Violence (Applicant) proceedings.

A determination must be made whether the applicant is in arrears, in respect of an existing amount payable. To make this determination the following will need to be identified:

- any payment arrangements in arrears
- the amount in arrears and
- whether the debt has been deferred.

The amount in arrears is the amount that has become due and payable to the Commissioner and remains unpaid by the applicant.

The amount payable has been deferred if the applicant's payments have been temporarily suspended. If the applicant is not in arrears, the applicant meets the 'arrears test' and moves onto the next eligibility test.

If the applicant is in arrears and the amount payable has been deferred, the 'interests of justice' test is met.

If the applicant is in arrears and the amount payable has not been deferred, the application will be referred to Legal Aid Debt for more information about the applicant's situation. This information is needed to consider whether there are interests of justice factors that enable the arrears test to be met.

If the arrears test is not met, and there are no interest of justice factors present, aid may be refused.

# Sufficient merit

THE RELEVANT SECTIONS AND SCHEDULE OF THE ACT ARE:

- section 7(1)(e): Proceedings for which legal aid may be granted: civil matters
- section 10: When legal aid may be granted: civil matters
- section 11: When legal aid may be granted: civil matters continued
- Schedule 2: Specified enactments.

‘Sufficient merit’ will be assessed using the criteria below.

## Reasonable grounds

Aid will be refused pursuant to s 10(3) of the Act if the applicant cannot show that they have reasonable grounds:

- for taking or defending the proceedings, or
- for being a party to the proceedings.

The applicant will have to show they have a significant personal interest in the outcome which justifies pursuing the matter or that the proceedings involve family violence or mental health.

If there are other factors such as several unsuccessful previous applications then legal aid may not be available.

## Appeals / original proceedings

An application for aid for an appeal may be refused pursuant to s 10(4)(e) of the Act if for any reason the grant of or further legal aid is not justified. The test is not necessarily more stringent than in the case of the original proceedings. The factor considered is whether there is a reasonable likelihood that the error in law and/or fact would be overturned on appeal.

## Section 10(4) consideration

The relevance of this section depends on whether the application is for proceedings under Schedule 2 of the Act.

An application is for a Schedule 2 proceeding if it falls under one of the following Acts:

- Adoption Act 1955
- Adult Adoption Information Act 1985
- Alcoholism and Drug Addiction Act 1966
- Care of Children Act 2004
- Child Support Act 1991
- Oranga Tamariki Act 1989 (except Parts 4 and 5 and ss 351-360)
- Family Violence Act 2018
- 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.

### **Legal aid for a Schedule 2 proceeding**

Aid may be refused pursuant to s 10(5) of the Act on the basis that it is not justified under s 10(6).

The criteria listed in s 10(6) include:

- the presence of previous proceedings
- personal protection issues
- complex factual legal or evidential matters requiring determination by the court, and
- whether it is in the public interest that aid be granted.

### **Legal aid for a non-schedule 2 proceeding**

Examples of a non-schedule 2 proceeding are relationship property and ACC matters. Aid may be refused pursuant to s 10(4)(d)(i) of the Act if the applicant's prospects of success are not sufficient to justify the grant of aid.

There must be a possibility of a successful outcome. Consideration will be given as to what legal action the applicant would take if they were paying for their own legal costs. Assessments will be made on a case-by-case basis and will weigh up likely benefits against likely costs.

Generally the prospects of success test will not be met if success is unlikely based on relevant case law, the applicant's actions and previous attempts to settle. However, discretion will be given where prospects are low but there are strong reasonable grounds.

### **Other refusal reasons**

Aid may be refused under s 10(4)(d)(ii) of the Act if the grant is not justified because of the proceedings and the applicant's interest in them (financial or otherwise), compared with the likely cost of the proceedings. For example, the cost of the proceedings exceeds the value of the property to be recovered (financial) or the psychological benefits of resolving the dispute than leaving it unresolved (non-financial).

Aid may be refused under s 10(4)(d)(iii) of the Act for any other reason where it appears unreasonable or undesirable that the applicant should receive legal aid or further aid in the particular circumstances of the case. Consideration will be given to whether the proceedings have been clearly prolonged, repeated or duplicated or whether there are other possible avenues for litigation or any other significant matters / exceptional circumstances.

## **Specific considerations for civil legal aid**

### **Private mediation**

THE KEY SECTION OF THE ACT IS:

- section 27: Private mediation.

Private mediation in this context refers to a facilitated process, voluntarily entered into by all parties in good faith and requested by either party or their representative. It must be led by a trained mediator who is a lawyer. Private mediation is different from alternative dispute resolution

processes involving mediation. There must be a reasonable likelihood that the dispute or part of will be resolved. When the claim for payment is made it must be accompanied by an outline of the outcome or copy of any agreement reached.

### **Inmates at Disciplinary Hearings**

The criteria for assessing whether an inmate is eligible for civil legal aid are:

- determined by s 10 of the Act
- determined by s 7 (1)(e)(v) that provides for any case 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.

Consideration will be given as to whether the inmate has the capacity to be self-represented, any points of law or procedural issues are likely to arise and whether the inmate will suffer substantial hardship if aid is not granted. Examples of substantial hardship are where the penalty represents a serious disadvantage or causes serious deprivation.

### **Prisoners' and Victims' Claims Proceedings**

The Prisoners' and Victims' Claims Act 2005 (the PVC Act) regulates the awarding of compensation to prisoners for breaches of their rights. It also provides a regime whereby victims of compensated prisoners can claim for damages payment for which would come out of the prisoner's compensation awarded.

Legal aid may be granted under s 7(1)(r) of the Act. The Tribunal referred to there is the Victims' Special Claims Tribunal which for legal aid purposes is a forum category one (FC1) forum. As applicants are exempt from the financial eligibility test the financial statement section in the application form will not be required.

If an amendment to grant is submitted then the remaining eligibility criteria including financial eligibility will have to be met. Conditions on the grant may also be imposed at this stage.

The maximum grant will be set pursuant to s 20 of the Act and the amount of grant is prescribed by regulation 15 of the Regulations. Four hours at GHR will be approved for written submissions and two hours preparation plus actual hearing time if the Tribunal agrees to hear oral submissions.

Appeals to the High Court on questions of law do qualify under this policy however it can be assessed against the usual criteria for appellate aid.

### **Returning Offenders (Management and Information) Act 2015**

Legal aid may be available for proceedings under the Returning Offenders (Management and Information) Act 2015. Someone who is subject to a determination that they meet the criteria of 'returning prisoner' may:

- respond to an application to the district court by the Department of Corrections to impose or vary special release conditions
- seek a review by the Commissioner of Police of the determination that they are a 'returning prisoner'
- seek a judicial review of the determination.

A response to an application to impose or vary special release conditions and a review by the Commissioner of Police of the returning prisoner determination are civil proceedings. A civil legal aid application is required. However, lawyers approved for criminal legal aid may also have appropriate experience for these matters. Accordingly, providers who are approved for PAL2 criminal matters can accept cases where an applicant for legal aid wishes to:

1. respond to a Department of Corrections' application to impose or vary special release conditions
2. seek a Commissioner of Police review of a determination that they are a 'returning prisoner'.

A judicial review of the determination that someone is a returning prisoner would require a provider who is approved for civil legal aid and a civil legal aid application.

A breach of a release condition under the Returning Offenders (Management Information) Act 2015 is a criminal offence. A criminal legal aid application is required and, if eligible, a criminal legal aid lawyer will be assigned on rotation.

### **Appeals to the Court of Appeal and the Supreme Court**

When evaluating the application, the decision of the High Court or the Court of Appeal will also be considered. The information in the trial file may also be reviewed.

Subject to the eligibility criteria being met, aid may be granted to cover the preparation of the Notice of Application for Leave to Appeal and supporting written submissions.

If the Court of Appeal or the Supreme Court grants leave to appeal, the grant may be amended to cover the substantive appeal. If the appeal is opposed the respondent may also apply for legal aid to prepare the submissions including that for any cross appeal.

### **Civil parole proceedings**

From 2 September 2013 all proceedings before the New Zealand Parole Board that concern an offender, who is entitled to legal representation under s 49(3)(c) of the Parole Act 2002, will be administered as criminal legal aid.

Aid for civil parole will be available for victims subject to the remaining eligibility criteria, for proceedings where there is a hearing before the New Zealand Parole Board and at which the victim may appear as of right or with the Board's leave.

Eligibility will be considered under s 7(1)(e)(v) of the Act which means the criteria in relation to eligible proceeding, eligible forum, legal representation and substantial hardship will have to be met. Only providers with a general civil listing are able to be assigned.

Legal representation will be determined by the nature of the proceedings and the applicant's interest in them. Consideration will be given as to whether the proceedings involve preparation of a written application and support affidavits, whether the applicant is required to make an appearance and whether they are capable of being self-represented.

### **Criminal Proceeds (Recovery) Act 2009**

Under s 11(7) of the Act, proceedings under Criminal Proceeds (Recovery) Act 2009 are exempt from the merits/prospects of success criteria under s 10(3) and (4).

Pursuant to s 11(5), the Commissioner is required to consider whether the interests of justice require aid to be granted, having regard to the factors in s 11(6):



- whether there are any serious consequences for the applicant if legal aid is not granted, and
- whether there are any complex factual, legal, or evidential matters in the proceeding that require the applicant to be legally represented.

# Eligibility for criminal legal aid

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There are four key decisions for establishing eligibility for criminal legal aid:

- eligible proceeding
- eligible applicant
- statutory sentence or the 'interests of justice'
- sufficient means.

## Eligible proceedings

THE KEY SECTIONS OF THE ACT ARE:

- section 4: Interpretation: civil proceedings, criminal proceedings, legal services
- section 6: Proceedings for which legal aid may be granted: criminal matters
- section 8(5): When legal aid may be granted: criminal matters (if child or young person is the applicant)
- section 14: Application for a grant of aid (application is made before final disposition)
- section 49(3)(c): Parole proceedings before the New Zealand Parole Board

Eligibility will be assessed using the criteria below:

### Final disposition

An application for legal aid must be submitted before the matter it relates to has been disposed of by a court or other forum.

### Proceedings before a general court

Legal aid is available for criminal proceedings pursuant to s 6 of the Act if it is a criminal charge, sentencing or appeal to be heard in the:

- District Court
- High Court
- Court of Appeal, or
- Supreme Court.

The exceptions to this are outlined below. As of 2 September 2013, legal aid is also available for parole proceedings pursuant to s 49 (3)(c). These proceedings require a provider with a minimum approval level 2 and they are managed under the fixed fee framework.

### Alcohol and Other Drug Treatment Courts

All participants in the Alcohol and Other Drug Treatment (AODT) programme require a legal aid grant.

Applications will meet the interests of justice test under s 8(1)(c)(ii) of the Act. Providers are allocated from the roster for the court location.

If the participant does not have a legal aid grant or had been considered financially ineligible for the matter when they first applied, but they are subsequently accepted into the AODT Court, then they can apply for a grant of aid under s 8(1)(c)(ii) for that purpose only. Privately retained lawyers cannot represent clients in this court. Due to the intensive nature of the AODT programme, the additional attendances can lift the costs significantly and accordingly meets the s 8(1)(b) Act requirements.

When the grant is finalised, Legal Aid Debt will apply a s 43 partial write off to reduce the total debt to \$1500 or apply the actual cost of services, whichever is lower.

If the participant exits the AODT programme early and withdraws their guilty plea, then costs incurred after exiting the AODT court will not be considered for a partial write off review and additional costs will apply.

### **Parole Act 2002**

Criminal legal aid is available for matters before the Parole Board if it is a:

- postponement order (s 27 Parole Act 2002)
- recall (breach of parole) (s 65 Parole Act 2002)
- non-release order (s 107 Parole Act 2002).

Criminal legal aid also became available for the following matters, which concern an offender, if heard before the New Zealand Parole Board and the offender is entitled, under s 49(3)(c) of the Parole Act 2002, to be legally represented:

- conditions on release at statutory release date (ss 17 to 19 Parole Board Act 2002)
- parole (ss 20 to 26, 28 to 32 Parole Act 2002)
- residential Restrictions (ss 33 to 40 Parole Act 2002)
- compassionate release (s 41 Parole Act 2002)
- review of decision on type of hearing (s 46 Parole Act 2002)
- variation or discharge of conditions (ss 56 to 58 Parole Act 2002)
- review of certain decisions (ss 67, 107S Parole Act 2002)
- review of pre-sentence detention record (s 92(2) Parole Act 2002)
- variation or discharge of non-association order (s 100(3) Parole Act 2002)
- conditions on release at final release date (s 104 Parole Act 2002)
- special conditions on extended supervision order (s 107K Parole Act 2002)
- variation or discharge of conditions on extended supervision order (s107O Parole Act 2002).

Criminal legal aid is available for matters before the High Court or Court of Appeal if it is an:

- application for an extended supervision order under ss 107F-107I, 107M of the Parole Act 2002
- appeal from certain decisions of the Parole Board under s 68 of the Parole Act 2002
- appeal from the sentencing court re extended supervision under s 107R of the Parole Act 2002.

Aid is usually available for conditions on release at final release date.

Consideration will be given to the nature and length of any alternative custodial sentence, potential consequences if the applicant were not represented and potential impact on the applicant's family.

### **Sentencing Act 2002**

Criminal legal aid may be available for applications for:

- substitution of a sentence of home detention
- judicial monitoring where a judge has asked for submissions on whether a sentence should be varied or cancelled.

### **Youth Court**

Legal aid is not available if the matter is going to be heard in the Youth Court and either a youth advocate has been assigned or the defendant is eligible for a youth advocate pursuant to s 8(5) of the Act. However, if the applicant is under 17 years of age and has been married or in a civil union, legal aid may be granted subject to the remaining criteria being met.

### **Criminal Cases Review Commission**

The Criminal Cases Review Commission (the Commission) is an independent body established under the Criminal Cases Review Commission Act 2019 to investigate and review criminal convictions and sentences and decide whether to refer them under that Act to an appeal court.

If the Commission decides to refer a case back to the appeal court, the court must hear and determine the matter as if it were a first appeal against the conviction or sentence.

Contact details for the Commission and their application form can be found on the Commission's [website](#).

From 1 July 2020, an eligible person (or a representative) may apply to the Commission for referral of a conviction or sentence to the relevant appeal court.

An application to the Commission is eligible for a grant of legal aid under s 6(e) of the Act, where it is made by an eligible person. Under s 8(1)(a) of the Act legal aid may only be approved if it is made by a person charged with or convicted of an offence who has exhausted all appeal rights.

### **Private prosecutions**

Legal aid is not available to fund a private prosecution pursuant to s 8(1)(a) of the Act.

### **Compensation for wrongful conviction and imprisonment**

Any claim for compensatory damages against the Crown where the cause of action arises from wrongful conviction and imprisonment is dealt with as a criminal application.

# Eligible applicant

THE KEY SECTION OF THE ACT IS:

- section 8: When legal aid may be granted: criminal matters.

Eligibility will be assessed using the criteria below:

## Natural person

There are no citizenship or residency requirements – the applicant need only be charged with or convicted of an offence in a New Zealand court.

## Charged with or convicted of an offence

Legal aid is available if the charge will be heard in an eligible forum under s 6 of the Act, or for an appeal against sentence or conviction.

## Child or young person

The exception to s 8(5) of the Act is if the applicant is a child (under 14) or young person (under 18) charged with a serious offence who will be tried or sentenced in the District Court or High Court.

# Statutory sentence or interests of justice

THE KEY SECTION OF THE ACT IS:

- section 8: When legal aid may be granted: criminal matters.

Eligibility will be assessed using the criteria below.

## Maximum sentence of 6 months or more

Under s 8(1)(c)(i) of the Act, legal aid may be granted if the sentence for the offence to which the application relates is a maximum term of imprisonment of 6 months or more. Under s 8(4) there are two exceptions, those being cases where the application is either for an appeal or for a Parole Act proceeding under s 6(c) of the Act.

## Interests of justice

For offences where the maximum penalty is less than 6 months imprisonment, aid may be available under s 8 (2) of the Act. When considering whether to grant aid, the Commissioner must take into account the following interests of justice factors:

- the presence of previous convictions
- whether the offence is punishable by imprisonment
- the likelihood of imprisonment
- whether the case involves a substantial question of law
- whether the case involves complex factual, legal or evidential matters requiring the determination of a court

- whether the applicant is able to understand or present their own case
- consequences to the applicant if aid were not granted
- in respect of an appeal, the grounds for appeal.

Other relevant circumstances include those which have a direct impact on the applicant and interest of justice factors.

**Consideration will be given to other issues:**

- the impact of s 24 and 25 of the New Zealand Bill of Rights Act 1990 which covers the applicant's right to adequate time and facilities to prepare a defence, legal assistance without cost, subject to eligibility criteria, and minimum standards of criminal procedure
- the provisions of the International Covenant on Civil and Political Rights which guarantees this right
- whether the matter could be dealt with by a duty lawyer especially if the offence is at the lower end of the scale and it could be dealt with on the day
- whether the charges have been laid under the Summary Offences Act 1981 or the Crimes Act 1961 or the Land Transport Act 1998 and therefore whether the applicant has a right to trial.

**Note:** All participants of the AODTC require a legal aid grant and therefore meet the interests of justice criteria. Due to the intensive nature of the AODTC programme, the additional attendances can lift the costs of the case significantly, which could deter participation if aid were not available.

## Sufficient means

THE RELEVANT SECTIONS OF THE ACT ARE:

- section 8: When legal aid must be granted: criminal matters
- schedule 1: Definition of income and disposable capital.

THE RELEVANT REGULATIONS ARE:

- regulation 8: Determining capital and disposable capital: valuation of assets
- regulation 9: Resources that have been disposed of.

Legal aid may be granted for criminal matters if it appears that the applicant does not have sufficient means to obtain legal assistance.

In addition to the applicant's gross income and disposable capital, consideration will also be given to the likely cost of similar cases, availability of the income, accessibility of capital and other relevant factors.

Availability of income includes considerations of the amount of weekly disposable income, family size in relation to income, any change in future income, who is in control of the income and any exceptional demands on the income, including serious hardship under s 43 of the Act.

Accessibility of capital includes considerations of the nature and value of any disposable capital, whether the applicant could raise funds by way of a loan or by selling an asset and whether any assets such as investments can be readily converted into cash.

Other relevant factors include details of the applicant's recent financial decisions in anticipation of legal costs and his/her ability to save for them, previous payments for legal costs, viability of private repayment arrangements and likely cost of the case. Consideration will be given to the likely cost of standard legal aid cases, the provider's estimate of costs and costs of a similar case if defended privately.

# Income and capital assessment

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## THE KEY SECTIONS OF THE ACT ARE:

- section 8(3): When legal aid may be granted: criminal matters having regard to income and disposable capital as set out in schedule 1
- section 10(2): When legal aid may be granted: civil matters
- section 15: Special provisions relating to minors and mentally disordered persons
- schedule 1: Definition of income and disposable capital.

## THE KEY PARTS OF THE REGULATIONS ARE:

- regulation 7: Determining disposable capital: home equity allowance
- regulation 8: Determining capital and disposable capital: valuation of assets
- regulation 9: Resources that have been disposed of.

## Income and capital resources

### SPOUSE OR PARTNER

According to Schedule 1 clause 4 of the Act, the Commissioner is required to treat the resources of a spouse/partner as the applicant's resources unless:

- the person is living apart from the spouse/partner, or
- the person and spouse/partner have contrary interests in the matter, or
- regulations provide otherwise.

### PARTNER

Partner refers to the applicant's civil union partner or de facto partner. If this is debated, it is up to the provider to show there is no financial interdependency. Living apart is not solely based on physical cohabitation. This approach is consistent with the principles for determining whether a spouse or partner are either cohabiting or living apart under other statutes such as Social Security Act 2018 (SSA), FPA and Property (Relationships) Act 1976.

In situations such as family violence where it would be unreasonable or impossible to access the spouse/partner's resources, these resources will not be assessed.

### MINOR

According to s 15 of the Act, if an application is made on behalf of a minor, the person making the application may be liable for repayment unless repayment is waived. Therefore, the financial circumstances of the representative/applicant are required for repayment rather than eligibility reasons.



The resources of the minor's parent(s) or person responsible for the minor may be treated as the resources of the minor/applicant. The resources are treated differently depending on whether the application is for a family/civil or criminal matter.

#### MINOR IN A CIVIL/FAMILY MATTER

If the minor is under 16 years and financially independent, or the parents have a contrary interest, then the parent's resources will not be included. If another person receives financial assistance under an agreement or court order for maintaining the minor, then this financial assistance will be treated as the minor's resources.

If the minor is over 16 years but under 20 years then the resources of the other person will be counted if that person is liable to maintain the minor under an agreement or court order, is the parent/foster parent/step-parent with whom the minor is living, or receives financial assistance under an agreement or order, for the purpose of maintaining the applicant.

#### MINOR IN A CRIMINAL MATTER

If the minor is under 16 years the resources of the parent / foster parent / step-parent with whom the minor is living are treated as the applicant's resources.

If the minor is 16 years or over the resources of the parent are not treated as the minor's resources.

If the minor is 16 years or over and receiving significant support from the parents then the value of any payments, goods or services, transport or accommodation supplied by the parents will be counted towards the minor's resources – this is usually set at the current value of the job-seeker support benefit rate.

#### REPRESENTATIVE FROM A GROUP

If the applicant is only concerned in a representative, fiduciary or official capacity then their personal resources will not be taken into account. However, consideration will be given to the value of the property or estate or the value of any fund by which the representative is entitled to be indemnified and the resources of any person who is beneficially interested. This is relevant to the subject person's financial assessment and whether they could fund the matter themselves.

#### THE TYPE AND VALUE OF INCOME

Gross annual income is the value before any deductions are made such as tax, child support payments and direct debit payments.

#### SOURCE OF INCOME

The definition of income is found in Schedule 1 clause 2(b) to the Act and linked to the meaning of income given in Schedule 2 of the Social Security Act 2018.

## The 12-month income assessment period

The 12-month period selected will be one that leads to a fair and accurate assessment of the applicant's financial circumstances taking into account periods of regular income, the date of any significant change in income, and the average level of income counting past and prospective income.

## Payments not counted as income

Some payments are excluded from the assessment of income:

Type of payment...	These are
Payments under Part 2 of the Social Security Act 2018, as specified in Schedule 1 of the Act	<ul style="list-style-type: none"> <li>Orphan's Benefit</li> <li>Unsupported Child's Benefit</li> <li>Child Disability Allowance</li> <li>Emergency Benefit</li> <li>Emergency Maintenance Allowance</li> <li>Accommodation Supplement</li> <li>Special Benefit</li> <li>Disability Allowance.</li> </ul>
Payments for special assistance approved by Minister under welfare programme SSA 124(1)(d)	<p>Some of the more common payments:</p> <ul style="list-style-type: none"> <li>Away from Home Allowance</li> <li>Home Help Programme</li> <li>New Employment Transition Grant</li> <li>Pathways Payment</li> <li>Recoverable Assistance Programme</li> <li>Seasonal Work Assistance Programme.</li> </ul>
Accident Compensation Corporation (ACC) payments, periodic and one-off, that are unrelated to a person's work or income.	<p>The following are some of the more common types of payments:</p> <ul style="list-style-type: none"> <li>Independence allowance</li> <li>Lump sum compensation</li> <li>Reimbursement for the cost of transport to treatment or to rehabilitation appointments</li> <li>Reimbursement for the cost of carers</li> <li>Reimbursement for the cost of rehabilitation equipment.</li> </ul>
Kiwi Saver	This is not assessed as income as the applicant is unable to access the money.
Veterans' Affairs payments under the Veterans' Support Act 2014	<p>All payments under Veterans' Support Act, other than the Veterans' Pension and weekly income compensation. The following are some of the more common types of payments:</p> <ul style="list-style-type: none"> <li>Disablement pension</li> </ul>

	<ul style="list-style-type: none"> <li>• War disablement pension</li> <li>• Surviving spouse or surviving partner pension.</li> </ul>
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### Verification of income

Note that we will require verification of all sources of income for family and civil cases. Verification will only be required for criminal cases where the Commissioner doubts the accuracy given in the financial statement of the application form

Type of income	Documentation required
Main source of employment income	<ul style="list-style-type: none"> <li>• a recent pay slip</li> <li>• a letter from the employer</li> <li>• a bank statement showing salary/wage paid into the account</li> <li>• an IRD statement</li> <li>• or annual accounts if the applicant is self-employed, a partner in a business or director of a company</li> </ul>
Benefit income	<ul style="list-style-type: none"> <li>• a copy of the letter received from MSD (issued within the last 3 months) addressed to the applicant which outlines their beneficiary status, and the amount of the core benefit plus any additional supplements received</li> <li>• a copy of a Statement of Earnings from the MSD outlining their beneficiary status, and the amount of the core benefit plus any additional supplements received – note this can be sought by the applicant or provider</li> <li>• a copy (original or photocopy) of a bank account statement (issued within the last 3 months) which belongs to the applicant for aid (or their partner), which shows the source of income from MSD and the weekly/fortnightly payment amount</li> </ul>
Income from a trust	<ul style="list-style-type: none"> <li>• Deed of trust and annual accounts as outlined in the application plus the prescribed trust form</li> </ul>

### Payments counted as income

Type of payment...	These are
<p>Any benefit, grant, allowance or concession that is payable under Part 2 of the Social Security Act 2018 not listed above.</p> <p>This includes a payment under the:</p> <ul style="list-style-type: none"> <li>• Veterans' Support Act 2014, and</li> <li>• NZ Superannuation and Retirement Income Act 2001</li> </ul> <p>Social Welfare (Transitional Provisions) Act 1990 also refers to superannuation and veteran payments.</p>	<ul style="list-style-type: none"> <li>• NZ Superannuation</li> <li>• Jobseeker Support</li> <li>• Sole Parent Support</li> <li>• Supported Living Payment</li> <li>• Youth payment</li> <li>• Young parent payment</li> </ul>

Type of payment...	These are
Any tax credit or payment made under Income Tax Act 2007.	<p>Family support (whether paid through Work and Income or Inland Revenue)</p> <p>Family plus:</p> <ul style="list-style-type: none"> <li>• child tax credit</li> <li>• parental tax credit</li> <li>• guaranteed minimum family tax credit</li> </ul>
All income from any other source, before tax	<ul style="list-style-type: none"> <li>• regular payments from salary, wages, interest/dividends</li> <li>• periodic payments from any other sources including income-related insurance payments, pension or superannuation payments including payments from overseas schemes, ACC weekly compensation payments, student allowance</li> <li>• board payments from the 3rd and additional boarders</li> <li>• rent</li> <li>• lump sum or one-off payments from seasonal layoff, redundancy, parental leave, life insurance, disability insurance</li> <li>• the value of any goods or services, transport or accommodation supplied on a regular basis.</li> </ul>
Payments for dependent children	<ul style="list-style-type: none"> <li>• child support</li> <li>• family support, or</li> <li>• money received to care for child under Oranga Tamariki Act 1989</li> </ul>
Working for Families Tax Credits	Not taxable
Any rental income derived from Maori land or interests in Maori land	Maori customary land or Maori freehold land
Periodic or regular payments not listed above	Income related payments that replace earned income
Benefit and earned income	Earned income plus abated benefit

## Capital

Capital is defined in Schedule 1 clause 1 to the Act. It is generally calculated by adding the value of assets and deducting the value of debts.

### ASSESSING THE VALUE OF AN ASSET

This is determined under regulation 8 of the Regulations by taking the fair market value at the date of the application form. Any interest in a reversion or remainder (whether legal or equitable) in any property must be computed in a matter that is both fair and reasonable.

### PROPERTY

Generally, property means the applicant's own house. Additional valuation information will be required if it is not clear whether the applicant has a legal or equitable share and what the value of it is or if the value of the outstanding debt appears very high.

#### CASH, SHARES, TERM DEPOSITS

The actual value of cash will be taken into account. The fair market value of 'near cash' assets such as investments will be taken into account. Applicants who have 'private shares' will have to demonstrate how the market value was determined.

#### ITEMS FOR PERSONAL, DOMESTIC/HOUSEHOLD OR WORK USE

The fair market value of these items will be what the applicant could reasonably expect to sell them for at the time the application is being made.

#### TRUSTS OR OTHER FUNDS

Regulation 8(4) sets out the factors to consider when assessing the interest an applicant may have in a fund with regard to:

- how the trust arose or was created
- the terms and conditions of the trust
- the person or persons who have the power to appoint and remove trustees or beneficiaries
- the history of the trust's transactions (for example, distributions)
- any changes in the membership of the trustees
- any changes in the class of beneficiaries and
- the source of income or capital that the trust receives.

Regulation 8(5) states that the Commissioner may treat all or part of the assets and income of a trust as assets and income of the applicant's regardless of the interest of any other person in the trust.

A trust form must be submitted with the legal aid application form. This can be downloaded from the Ministry of Justice website. In addition, a copy of the trust deed, copies of financial statements from the previous two years and confirmation of value of any debt owing by the trust to the applicant must be submitted.

#### INSURANCE AND SUPERANNUATION

The fair market value will be the current value and will only be counted if the applicant is reasonably expected or able to access the funds. Kiwi Saver funds are not assessed.

#### 'LUXURY' OR SIMILARLY VALUABLE ITEMS

The fair market value of each item will be taken from the valuation report for that item. Valuations up to three years old will be accepted.

#### BUSINESSES

Regulation 8(7) clarifies situations when the applicant may be treated as the sole owner or partner in a business and the resources treated as the applicant's assets. The fair market value will be based on

the latest annual business accounts or the owner's equity. Verification of the current market value must be submitted.

#### CONTINGENT LIABILITIES

The value of these will be taken into account if it is liable to be called in the next six months. Note that costs arising out of daily activities such as rates or mortgage payments are not contingent liabilities.

#### Calculating disposable capital for eligibility decision

Schedule 1 clause (3)(1) of the Act sets the procedure for determining disposable capital as total assets less:

- the value of debts secured against those assets, and
- allowable deductions of:
  - equity in a home (property which is the applicant's principal place of residence) up to \$80,000 (regulation 7)
  - value of interest in the applicant's car (if used principally for domestic purposes)
  - value of the applicant's household furniture, household appliances, personal clothing and tools of trade
  - the amount of contingent liabilities that may mature within the next 6 months
  - the amount of actual debt (other than the secured debts noted above)
  - the value of subject matter of the proceedings unless it is determined that the portion of that value should be included in the assessment of the applicant's total assets.

#### Whether resources have been intentionally disposed of

Regulation 9 allows the Commissioner to take into account resources that the applicant has intentionally disposed of in order to make him or herself eligible for legal aid or reduce any repayment.

The Commissioner will investigate this in a similar way to an allegation of ineligibility. Clarification will be sought as to whether the resources in question were disposed of in the 12 months prior to the application being made. A written explanation for the purpose and timing of the disposal must also be given. This includes assets that have been sold, gifted or transferred ownership/responsibility of by the applicant.

#### Bankrupt applicant

The Commissioner may establish a debt as a result of income assessment actual earnings. However, it will not establish a debt based on the bankrupt applicant's capital resources. The Commissioner has no control over how the Official Assignee may value or dispose of the asset. The decisions of the Official Assignee involve discretion as to the value of the asset and what the bankrupt person can retain.

# Allegations of ineligibility

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Allegations of ineligibility for legal aid or information that raises doubts will be managed by the relevant legal aid office. It is legal aid policy to keep the identity of informants confidential unless consent is given for his/her identity to be disclosed.

- the informant will be asked to provide their full contact details, document the allegations in writing (if the information is received verbally) and provide written authorisation to refer the allegations to the provider and client. Verbal allegations will not be accepted. Any evidence offered will be followed up by Grants staff.
- if the informant refuses to provide authorisation, a decision will be made as to whether the allegation is worth pursuing. If it is, a summary of the allegations will be given to the provider for further comment. If it is not worth pursuing the informant will be advised and directed to this policy criteria
- if authorisation is given, the client's lawyer will be given a copy of the allegations for further comment. If the allegation is inflammatory or threatening then a summary will be given instead
- once the provider's comments are received and the investigation is complete the informant will be advised as to whether the client is receiving legal aid

**Note:** The only information that can be provided is whether the client "is/is not currently receiving legal aid". If the informant is seeking confirmation about whether a client has applied for legal aid, has been declined/refused aid, or whether aid has been withdrawn, the information will be withheld to protect the client's privacy.

# Provider assignment

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The Commissioner is responsible for the assignment of all legal aid cases to providers and will adhere to the following guidelines to ensure an open and fair process.

Assignment occurs when a lead provider agrees to take on a legally aided case, whether this is:

- a criminal case assigned by rotation
- a family or civil case
- a criminal case preferred lawyer assignment.

Cases are assigned to individual lead providers rather than to a law firm.

## Criminal assignments

### Cases requiring a PAL 1 or PAL 2 provider

Assignments are made by rotation, that is, the aided person cannot nominate a lawyer. An assignment system will ensure that for each year assignments are made fairly and evenly to appropriately categorised legal aid providers within a court cluster. Separate assignment lists will be maintained for each category.

Providers must be on the assignment list if they wish to receive cases. A provider can be on only one cluster at a time.

Each provider on a list will receive the same number of assignments over time except where the assignment is influenced by:

- a provider being unavailable
- providers wanting fewer than their share of assignments
- exceptions to rotational assignments.

### Assignment lists

Providers can choose the cluster they want to be on and generally the specific court or combination of courts from which to receive assignments.

Providers should advise of their availability to receive assignments, out of 100%, as they may want to limit the number of assignments they receive or take a long period of leave.

If a provider is going to be unavailable to accept rotational assignments for a period of time, they must inform Legal Aid Services by completing the Criminal Case Assignment Availability form or by detailing their unavailability in writing. The completed form or written notification should be sent by email to the Provider Services team and copied to the relevant legal aid office.

Provider shortages sometimes arise, usually in rural satellite courts. To mitigate this, if a provider is willing to travel to the rural court, we will consider adding them to that court's assignment list. Additional cases may be assigned as an incentive. In such situations, first preference will be given to providers in the same court cluster.



### **Maintaining assignment lists**

Assignment lists are updated regularly. Provider requests for removal will be processed immediately. If a provider's approval or contract is cancelled (or pending cancellation) they will also be removed from the assignment list immediately (and cases reassigned). The Ministry of Justice website will show regular updates on how all assignment lists are operating, including numbers of assignments.

### **Assignment**

Assignment is made by rotation to a lead provider who:

- has a listing for the appropriate approval level, and
- appears on the assignment list for the court where the charge is filed.

Some courts may require providers to be on the duty lawyer roster to receive assignments.

Providers are generally notified of the assignment by email. The assignment is assumed to be accepted unless the provider contacts the Commissioner to decline it. Where an assignment is declined the provider may be offered an assignment at their next turn on the assignment list. If the provider does not want to lose their turn, they must have a valid reason for declining the initial assignment such as a conflict of interest, insufficient time to prepare, the instructions are outside their expertise or other exceptional circumstances.

If a provider declines two consecutive assignments without an accepted valid reason, the matter may be referred to Legal Aid Complaints, Provider and Community Services.

### **Urgent assignments**

Where the matter is urgent, such as an opposed bail application that cannot be dealt with by a duty lawyer, then providers at the top of the rotational assignment list will be contacted for availability. If a provider cannot be contacted within the required time frame or they are not available, the duty lawyer supervisor for the relevant court will be contacted for advice as to who is available.

## Exceptions to rotational assignments

The following situations are exceptions to the rotational assignment policy.

IF...	THEN...
the aided person is already receiving aid for charges not yet disposed of by the court and the new charges are running separately	the assignment for the new charges may be to the provider on the active grant
the aided person is transferred to an AODT court	a lawyer from the AODT Legal Services team will be assigned (via PDS)
a holding charge in the PAL3 or PAL4 charge is pending and the rotational provider does not have the appropriate listing	assignment must be made to a provider with the appropriate listing
the aided person has been subject to the Mental Health (Compulsory Assessment and Treatment) Act within the last three months	consideration may be given to assign a mental health lawyer – if one is not available then a provider off the assignment list will be assigned
the aided person has been subject to the Intellectual Disability Compulsory Care and Rehabilitation Act within the last three months	consideration may be given to the most recent provider assigned with the appropriate listings
<p>a PDLA lawyer has provided initial advice to the aided person outside usual working hours (evenings from 7pm to 8am, weekends from 5pm Friday to 8am Monday, and public holidays from 5pm the previous day until 8am the following day), and all the following apply:</p> <ul style="list-style-type: none"> <li>▪ they have submitted the PDLA notification form by 9am the following morning (aided person in custody) or three working days (not in custody)</li> <li>▪ the aided person does not have an active grant with another provider (if they do then an alternative case will be assigned)</li> <li>▪ the PDLA lawyer has the appropriate listing</li> <li>▪ there are no travel costs.</li> </ul>	the PDLA lawyer may receive the assignment. It would not be counted in their rotational total
the case is before the Court of Appeal or the Supreme Court	the initial provider may be assigned or the aided person may nominate a preferred provider (note the assigned provider must have the appropriate Court of Appeal or Supreme Court listing)
the case is for a criminal parole board matter	the aided person may be assigned their preferred provider with the appropriate listing approval
there is a provider shortage at a court	a provider from another assignment list may be assigned. First preference will be given to providers in the same court cluster
there is an exceptional circumstance	consideration may be given to assigning a preferred provider with the appropriate approval

Some examples of exceptional circumstances are:

- where a provider has formed a long-standing relationship of mutual trust with a client who has a range of mental health, addiction, family dysfunction, comprehension and/or anger issues, and it would be beneficial to the client if the same provider was assigned when there is a new charge
- where an offender is on parole and is charged with another offence, and it would be beneficial for the offender if they could request that their parole provider defend them on the new charge – so long as the parole provider either operates in the same area or is willing to take on the case without requesting travel disbursements.

### **Parole cases**

If aid is sought for parole proceedings, the aided person can nominate a preferred provider provided they have a PAL 2 approval, at minimum. If they do not identify a preferred provider, the case will be assigned by rotation.

The Commissioner will not usually assign a provider based outside the location where the case is to be held. Exceptions will be made:

- if the preferred provider agrees to pay for all associated travel costs to the CBD closest to the prison or hearing venue and there will be no disruption to hearing schedules; or
- where no provider within the location is available.

Any other exceptions will be considered on their merits.

### **Alcohol and other Drug Treatment Courts**

The AODT courts do not assign a provider by rotation. Providers are assigned from a roster for the court where proceedings are to be held. This roster is managed by the relevant Public Defence Service office.

### **Cases requiring a PAL 3 or 4 provider**

Applicants may nominate a preferred lawyer. If they don't, the Commissioner will assign one by rotation, except for applications to the Criminal Cases Review Commission. The applicant must nominate a preferred lawyer for an application to the Criminal Cases Review Commission.

The preferred lawyer must have:

- been directly approached by the aided person or
- represented the person on other matters within the last 5 years or
- been specifically recommended to the person by someone they trust or
- provided advice to the client as a PDLA lawyer with the appropriate listing.
- been appointed as a Youth Advocate in the Youth Court

As providers are required to act in accordance with the Lawyers and Conveyances Act (Lawyers: Conduct and Client Care) Rules 2008 they must not contact the aided person directly in a way that is intrusive, offensive or inappropriate (rule 11.2(a)). Touting or unduly influencing a person's choice of provider is inappropriate conduct and is taken very seriously. The Commissioner will take steps to address any concerns regarding inappropriate conduct and reserves the right to not assign the

preferred lawyer or to terminate the assignment and assign a lawyer by rotation. The matter may be referred to Legal Aid Complaints, Provider and Community Services.

The Commissioner will not usually assign a provider based outside the location where the case is to be held. An exception will be made if the preferred provider agrees to pay all the travel costs associated with the case as long as there will be no disruption to hearing schedules. Any exceptions will be considered on their merits.

Where an aided person requests a new provider and the request is approved, then one will be assigned by rotation if they have previously been assigned a preferred lawyer. Where they have not been assigned a preferred lawyer, they may be assigned one. If the preferred lawyer requests reassignment on grounds outside of the aided person’s control such as ill health, conflict of interest or other ethical impediments, the aided person may nominate a second preferred lawyer.

### Rotational assignments

An assignment system will be operated to ensure that for cases requiring a PAL3 or PAL4 provider, rotational assignments are allocated fairly and evenly. Assignment lists will include all appropriately categorised providers within a cluster. A provider can be on the assignment list(s) for only one court cluster. Preferred lawyer assignments are in addition to rotation assignments and therefore will not be counted towards a provider’s rotational total.

Before making a rotational assignment, Legal Aid Services will contact each provider on the list in order. The case will be assigned to the first provider who is available and who considers the case to be within his or her expertise. Providers who are unavailable to accept rotational assignments for a period of more than 5 working days must inform Legal Aid Services using the Criminal Case Assignment Availability form by detailing their unavailability in writing. The completed form or written notification should be sent by email to the Provider Services team and copied their local legal aid office.

As discussed above, for cases requiring a PAL1 or PAL2 provider, if an aided person has an existing grant for charges that are still before the court, the same provider may be assigned the new case provided they have the appropriate listing.

### Applications to the Criminal Case Review Commission

As shown below:

- Cases where the right of first appeal from the original conviction is to the Court of Appeal require a provider who has a Court of Appeal/Supreme Court approval.
- Cases where the right of first appeal from the original conviction is to the District Court or High Court require a provider who has a PAL3 approval, or PAL4 approval if the original conviction was PAL4.

Original conviction	Right of first appeal was to the District Court or High Court	Right of first appeal was to the Court of Appeal
PAL1	PAL3 approved provider	Court of Appeal/Supreme Court approved provider
PAL2	PAL3 approved provider	Court of Appeal/Supreme Court approved provider

<b>PAL3</b>	PAL3 approved provider	Court of Appeal/Supreme Court approved provider
<b>PAL4</b>	PAL4 approved provider	Court of Appeal/Supreme Court approved provider

# Family and civil legal aid assignments

The aided person will nominate a preferred lawyer who must be:

- approved in the appropriate category
- have a contract to provide legal aid services
- willing and available to undertake the assignment from the outset
- based in the location where the proceedings will be held
- able to appear at court as needed.

A provider outside the area where the proceedings will be held, (i.e. where travel will be 'non-local' as defined in the travel disbursements policy) may be assigned depending on:

- the availability of providers in the area with the appropriate approvals and/or expertise in the matter
- the existence of any conflicts of interest among providers within the area
- an inability of the legally aided person and/or other persons significant to the matter to travel
- the location of the other party
- the merits of the individual circumstances of the case.

Where based on the factors above, a provider outside of the area where the proceeding is to be held is assigned, reasonable travel costs will be paid subject to the disbursements policy.

Where none of the above factors apply, an exception may still be made if a preferred provider agrees to pay the travel costs associated with the case and as long as there will be no disruption to hearing schedules and there is an undertaking that travel costs are not sought or received from the aided person.

Note, an aided person can have different lawyers for different family and civil proceedings.

## Instructing solicitors

Under rules 14.4-14.12 of the Rules of conduct and client care for lawyers, barristers sole may act or advise without instructions from a solicitor where they:

- have been assigned to a legally aided person in a criminal matter
- are acting as a duty lawyer
- are providing assistance to a legal advice service operating on a non-profit basis or acting pro bono on work referred by such service
- are acting as a specialist adviser to Legal Aid Services
- are acting under the PDLA scheme
- are acting in a refugee status matter pursuant to the United Nations 1951 Convention
- are representing a client under the provisions of the Mental Health (Compulsory Treatment and Assessment) Act 1992
- are representing a prisoner in an internal disciplinary hearing
- in a family or civil case where prior approval has been granted by NZLS.

In respect of this list, barristers do not need to provide evidence of an instructing solicitor with the legal aid application.

In all other legally aided matters (including family and civil legal aid where NZLS approval hasn't been given), barristers sole are required to have an instructing solicitor. This requirement applies to lead and secondary providers.

The instructing solicitor must:

- be identified on the legal aid application form
- have the appropriate law type approval (instructing solicitors in civil cases must have a civil approval and instructing solicitors for family cases must have a family approval)
- protect the Commissioner's interests under s 107 of the Legal Services Act 2011 (the Act)
- claim only for the actual and reasonable time spent on their attendances as a disbursement through the lead provider
- accept assignment of the collection of any financial recoveries by the lead provider
- be authorised to operate a trust account.

The Commissioner will approve a disbursement based on actual and reasonable time at the appropriate gross hourly rate for the instructing solicitor's attendances.

## Location exceptions

The table below shows exceptions to the assignment policy where a provider may be assigned from outside the location where the proceeding is to be held and, subject to the disbursements policy, reasonable travel costs will be approved. The exceptions are required because of an insufficient number of local providers in the law type at the listed courts or locations.

In family cases, a provider is outside the location where the proceeding is to be held if the travel will be 'non-local' as defined in the disbursements policy. In criminal cases, the travel must be 'non-local' as defined in the disbursements policy.

Court or Location	Law Type	Who can be assigned
Ashburton	Criminal PAL 2 - 4	Providers from Christchurch and Timaru
Alexandra	Criminal PAL 4	Providers from Dunedin
Blenheim	Criminal PAL 1 - 2	Providers from Nelson
Dannevirke	Criminal PAL 1 - 4	Providers from Napier/Hastings
Dargaville	Criminal PAL 1 - 4	Providers from Whangarei and Kaikohe
Gore	Criminal PAL 1 - 4	Providers from Invercargill
Greymouth	Criminal PAL 1	Providers from Christchurch
Hawera	Criminal PAL 1	Providers from New Plymouth and Whanganui
Kaikohe	Criminal PAL 2 - 4	Providers from Whangarei
Kaitaia	Criminal PAL 1	Providers from Kaikohe and Kerikeri
Kaitaia	Criminal PAL 2 - 4	Providers from Kaikohe and Whangarei
Kaikoura	Criminal PAL 1 - 4	Providers from Blenheim
Oamaru	Criminal PAL 4	Providers from Dunedin
Queenstown	Criminal PAL 3 - 4	Providers from Invercargill
Ruatoria	Criminal PAL 1 - 4	Hawkes Bay/Gisborne based providers who are also on the duty lawyer roster
Taihape	Criminal PAL 1 - 4	Whanganui and Ohakune based providers

Court or Location	Law Type	Who can be assigned
Taupo	Criminal PAL 2 - 4	Rotorua/Tokoroa based providers
Te Kuiti	Criminal PAL 1 - 4	Waikato lawyers on the Te Kuiti duty lawyer roster
Thames	Criminal PAL 1 - 4	Waikato lawyers on the Thames duty lawyer roster
Timaru	Criminal PAL 3 - 4	Providers from Christchurch
Tokoroa	Criminal PAL 3 - 4	Providers from Rotorua
Waipukurau	Criminal PAL 1 - 4	Providers from Napier/Hastings
Westport	Criminal PAL 1	Providers from Greymouth
Westport	Criminal PAL 2 - 4	Providers from Greymouth and Christchurch
Wairoa	Criminal PAL 1 - 4	Hawkes Bay/Gisborne based providers who are also on the duty lawyer roster
Whangarei	Criminal PAL 2 - 4	PAL 2 - 4 Jury trials for Kaikohe lawyers not on the Whangarei DC list, where cases have been <b>transferred</b> from Kaitaia and Kaikohe District Courts
Ashburton	Family	Providers from Christchurch and Timaru
Alexandra	Family	Providers from Dunedin, Gore and Invercargill
Blenheim	Family	Providers from Nelson and Christchurch
Christchurch	Family	Rangiora providers for Rangiora clients.
Gore	Family	Providers from Invercargill
Nelson	Family	Motueka lawyers for Motueka clients
Queenstown	Family	Providers from Dunedin, Gore and Invercargill
Wairarapa	Family	Providers from the Hutt Valley and Manawatu areas
Westport	Family	Providers from Nelson and Christchurch
Christchurch	Mental Health	Rangiora providers assigned by the Mental Health Inspector to Christchurch clients.

## Delegation of work

This policy allows for the lead provider, who has been assigned to the case by the Commissioner, to temporarily delegate work on a legal aid case to another appropriately approved provider.

When work is delegated, the lead provider remains accountable for the quality of all services delivered.

Separate policies describe the circumstances in which work may be delegated to:

1. a supervised provider
2. a provider who has a criminal provider approval level below that required by the case
3. a provider who has the same (or higher) provider approval than that required by the case
4. a nominated alternate
5. a non-lawyer.

The delegation of work policy is separate from and does not inform the policy on the appointment of second counsel in criminal cases. There are also separate policies for delegation of work to second counsel (including co-counsel and junior counsel) in criminal cases that are managed under the high cost case framework and for Waitangi Tribunal cases.

### Delegation to a supervised provider



Supervised providers are lawyers who have demonstrated that they meet the criteria in the Legal Services (Quality Assurance) Regulations 2011 but do not meet the required experience or competence to be approved as a lead provider. Approval as a supervised provider is subject to the requirement that the supervised provider is supervised by, and responsible to, an approved lead provider. Legal aid cases cannot be assigned to a supervised provider.

## RESPONSIBILITIES

The lead provider is responsible for all work carried out on cases assigned to them. This includes responsibility for:

- all work completed by a supervised provider and
- ensuring all work delegated to the supervised provider is adequately supervised, including where supervision is delegated to another lead provider.

Supervision is an interactive process. The lead provider has oversight of all supervised provider work including:

- reviewing written work
- discussing advice and information for clients and
- providing feedback on the supervised provider's performance.

Lead providers may ask supervised providers to self-assess their performance as a basis for on-going development and training. This aligns with the New Zealand Law Society's Continuing Professional Development Rules which encourage all lawyers to identify areas for their own development.

Supervision is based on flexibility and trust. Lead providers have the ability to delegate work to supervised providers, as appropriate. Lead providers also have the discretion to adapt their supervision arrangements to suit the development of supervised providers. This flexibility recognises that a lead provider will have thorough knowledge of the supervised provider's competency and the supervision required to ensure legal aid clients receive quality legal advice and representation.

This high trust implies high accountability. Where there are substantiated, serious concerns about the quality and level of supervision, the Ministry of Justice is able to impose appropriate sanctions under the Legal Services Act 2011.

## ADEQUATE SUPERVISION

Adequate supervision arrangements help to ensure the supervised provider's work is of a high standard. Lead providers are responsible for providing adequate supervision. In doing this they must determine the level of supervision and assistance the supervised provider requires. Adequate supervision takes account of the following factors:

- **THE SUPERVISED PROVIDER'S LEVEL OF COMPETENCY**

Lead providers are responsible for ensuring their supervision arrangements match the supervised provider's level of competency. Supervised providers with little or no experience require considerably more supervision than those close to achieving the requirements for approval as a lead provider.

- **PROXIMITY AND ACCESS**

Lead providers must ensure that they are accessible and responsive to supervised providers. The lead provider must be able to be contacted and give advice in a timely manner. Where the lead provider is temporarily unavailable, the lead provider should make arrangements for another suitably qualified lawyer to provide supervision to the supervised provider. Lead providers do not have to work in the same firm or chambers as the supervised provider, although it is preferable for less experienced supervised providers.

- **DIRECT OVERSIGHT**

Lead providers must have arrangements in place to provide direct oversight, where it is needed. There are circumstances where direct oversight is necessary (see *substantive appearances* section below) but supervised providers do not need to carry out all work under direct oversight.

Direct oversight may include discussing matters with the supervised provider, both before and after an appearance, and being available to assist, if needed. The assigned lead provider has the discretion to determine whether the appropriate exercise of direct oversight requires the physical presence at court by the lead provider, based on the issues and complexity of the matter and the competency level of the supervised provider, or whether a desirable level of supervision can be achieved in other ways, including the use of modern technology.

- **NUMBER OF SUPERVISED PROVIDERS**

Lead providers should not supervise more than a reasonable number of supervised providers. The supervising lead provider needs to be satisfied that supervision will be easily accessible, appropriate in content and sufficient in time, and that sufficient direct oversight will be provided, particularly if more than one lawyer is being supervised. When making a decision on an application for approval as a supervised provider, the Secretary of Justice (the Secretary) may consider the total number of supervised providers the proposed supervising lead provider is already responsible for.

## REMUNERATION

All invoices must be submitted by the assigned lead provider. The assigned lead provider is responsible for ensuring that all claims are accurate. For fixed fee cases, all work is built into the fee. For non-fixed fee cases, the supervised provider’s work must be charged at the supervised provider rate.

There is no provision for separate legal aid payment to a lead provider for the time taken to supervise a supervised provider. This would be outside of the tasks normally covered by the guideline hours set out in the proceeding steps and fixed fee schedules in the Eligibility section of the Legal Aid Grants Manual.

## SUBSTANTIVE APPEARANCES

Supervised providers may make substantive appearances, but only under the direct oversight of the lead provider. Substantive appearances include:

AREA OF LAW	TYPE OF SUBSTANTIVE APPEARANCE
Civil/Family	<ul style="list-style-type: none"> <li>• defended hearings</li> <li>• hearings in respect of applications for a declaration under the Oranga Tamariki Act 1989 – whether uncontested or contested</li> </ul>

	<ul style="list-style-type: none"> <li>• hearings in respect of reviews of a care and protection plan (for Oranga Tamariki Act matters).</li> <li>• all types of pre-hearing conferences</li> <li>• appeals</li> <li>• chambers lists or Family Violence List hearings</li> <li>• formal proof hearings</li> </ul>
Criminal	<ul style="list-style-type: none"> <li>• trials – Jury and Judge-alone</li> <li>• interlocutory applications</li> <li>• appeals</li> <li>• pre-trial hearings</li> <li>• judicial conferences</li> <li>• opposed bail applications</li> </ul>
Waitangi	<ul style="list-style-type: none"> <li>• tribunal hearings</li> <li>• directions hearings</li> <li>• judicial conferences</li> </ul>

Lead providers do not need Ministry of Justice consent for an approved supervised provider to make a specific substantive appearance, except for Waitangi Tribunal cases. In Waitangi Tribunal cases lead providers must obtain prior approval from the Waitangi grants team located in the Wellington Legal Aid Office before a supervised provider is allowed to make a substantive appearance.

**Delegation to a provider with a lower criminal provider approval level than that required by the case**

A lead provider may delegate specific work as appropriate in a criminal case to another provider who has a provider approval level (PAL) below the level of the case without the prior approval of the Commissioner. For example, this may occur in situations where a case is categorised at and assigned to a lead provider who holds an approval as a lead provider in Criminal PAL 2, but where some work can be appropriately delegated to another provider who holds an approval as a lead provider in Criminal PAL 1. Any such delegation must be subject to appropriate oversight.

Where a lead provider has limited capacity and is unable to continue delivering the legal services required by their client, the lead provider should inform the Commissioner and seek a reassignment. The lead provider has no authority to temporarily or permanently reassign responsibility for a case to another provider, except where a nominated ‘alternate’ is appointed during a period of unavailability (see ‘delegation to a nominated ‘alternate’’, below).

## APPROPRIATE OVERSIGHT

Where work is delegated, the delegated provider is accountable to the assigned lead provider who is responsible for the assignment. Where substantive matters (see below) are delegated, the lead provider must have arrangements in place to provide direct oversight of the delegated provider.

Direct oversight may include discussing matters with the delegated provider, both before and after an appearance, and being available to assist, if needed. The lead provider has the discretion to determine whether the appropriate exercise of direct oversight requires the physical presence at Court by the lead provider, based on the issues and complexity of the matter and the competency level of the delegated provider, or whether a desirable level of oversight can be achieved in other ways, including the use of technology.

If the Commissioner has any concerns about the delegation and /or oversight of the case by the lead provider, the matter will be referred to Legal Aid Complaints, Provider Services. Where there are substantiated, serious concerns the Ministry of Justice is able to impose appropriate sanctions under the Legal Services Act 2011.

## SUBSTANTIVE APPEARANCES

Delegated providers may make substantive appearances, but only under the direct oversight of the lead provider. Substantive appearances include:

AREA OF LAW	TYPE OF SUBSTANTIVE APPEARANCE
Criminal	<ul style="list-style-type: none"><li>• trials – Jury and Judge-alone</li><li>• interlocutory applications</li><li>• appeals</li><li>• pre-trial hearings</li><li>• judicial conferences</li><li>• opposed bail applications</li></ul>

## REMUNERATION

In cases not covered by fixed fees, remuneration will be at the delegated provider approval level and litigation experience rate. Details of the work and the guideline hourly rate (where applicable) must be indicated on the lead provider's invoice. Where substantive matters are delegated, a written explanation must be submitted before any claim for payment can be approved.

Where an amendment to grant is required for additional time to instruct the delegated provider and/or for additional preparation by the delegated provider, the Commissioner's prior approval is required for that amendment.

### **Delegation to a provider with the same or higher provider approval than that required by the case**

A lead provider may delegate work to another provider who has the same or higher provider approval level as the level of the case (an agent) without the prior approval of the Commissioner in circumstances:

- where it is cost effective (e.g. where a pre-trial appearance is required at another location)
- or

- that prevent the provider from appearing in person and which are unanticipated and/or outside the provider's control.

A written explanation must be submitted before any claim for payment can be approved.

Where a lead provider has limited capacity and is unable to continue delivering the legal services required by their client, the lead provider should inform the Commissioner and seek a reassignment. The lead provider has no authority to temporarily or permanently reassign responsibility for a case to another provider, except where a nominated 'alternate' is appointed during a period of unavailability as described below.

Where an amendment to grant is required for additional time to instruct the delegated provider and/or for additional preparation by the delegated provider, the Commissioner's prior approval is required for that amendment.

If the Commissioner has any concerns about the delegation and/or oversight of the case by the lead provider, the matter will be referred to Legal Aid Complaints, Provider Services. Where there are substantiated, serious concerns the Ministry of Justice is able to impose appropriate sanctions under the Legal Services Act 2011.

#### **Delegation to a nominated 'alternate' during a period of unavailability**

The Legal Aid Provider Contract for Services allows the lead provider to make standing arrangements with another lead provider (an 'alternate') to undertake the work on their accepted assignments during periods when the provider is unavailable to do so. The alternate must have been named in their provider contract or the provider must have subsequently notified the Commissioner of their alternate. The provider must ensure that the alternate, at a minimum, holds the same legal aid provider approval/s as the provider for any work he or she will undertake.

The nominated alternate will have authority to manage the lead provider's current assignments during the period of unavailability of the lead provider. However, the lead provider retains overall responsibility for the assignments and any services provided by the alternate in respect of them.

The alternate is able to sign amendment requests or invoices on behalf of the lead provider in relation to any current assignment when they are acting during a period when the lead provider is unavailable. When doing so they must advise the Commissioner that they are acting as the lead provider's nominated alternate. Any payments or approvals will be addressed to the lead provider.

The alternate is not able to:

- accept any new assignments on behalf of the lead provider, or
- arrange the reassignment of any of the lead provider's current clients.

When a lead provider is absent for 15 working days or longer, they must notify the Commissioner in advance of the arrangements they will put in place for their assignments in their absence and whether their nominated 'alternate' will manage their assignments in their absence. If the Commissioner is not satisfied with the proposed arrangements, the Commissioner may reassign the lead provider's assignments to another lead provider.

## Delegation to a non-lawyer

Non-lawyers are legal executives (qualified and non-qualified), paralegals and law clerks, (who may be practising lawyers), who are not approved by the Secretary or contracted to provide legal aid services. The lead provider is responsible for all work undertaken by a non-lawyer and must provide an appropriate level of supervision. The lead provider must also ensure that there is no conflict of interest with the non-lawyer working on a particular matter.

### THE LEAD PROVIDER CAN DELEGATE THE FOLLOWING MATTERS:

- meeting with clients regarding legal aid matters for example assisting with legal aid forms
- legal research
- document drafting.

### NON-LAWYERS MUST NOT:

- attend any hearings whether minor or substantive
- take instructions from clients
- give legal advice.

For fixed fee cases, non-lawyer costs are deemed to be included in the applicable fixed fees and cannot be claimed as a separate disbursement, unless approved via an amendment to grant application.

Claims for work undertaken by non-lawyers must be claimed on the lead provider's invoice as a disbursement and comply with the requirements of the disbursement policies.

### PRIOR APPROVAL AND PRE-APPROVED

Delegation of work to a non-lawyer may be subject to prior approval or pre-approved in accordance with the requirements of the disbursement policies.

## Reassignment and termination

It is expected that reassignments and terminations of assignment will occur infrequently. It may be instigated by the Commissioner or requested by the lead provider or aided person.

Responsibility and authority for reassignment lies strictly with the Commissioner and not with the lead provider. In situations where a case has been handed over to another lead provider (unless delegated or in an emergency) payment will not be made to that other lead provider.

To request termination of an assignment the lead provider and/or aided person must submit a written request to the legal aid office, which sets out the reason termination is sought. If there are reasons of client privilege that prevent disclosure, this should be noted. The Commissioner will seek feedback from either party if appropriate. Priority will be given depending on the nature of the case and the needs of the client. A reassignment will be made if required. Payment will be made for work completed up to the date of termination. The matter may be referred to Legal Aid Complaints, Provider Services.

Once all the necessary information has been received, a decision on whether to terminate the assignment is made within 24 hours.

The aided person can request a change of provider once; a second reassignment may be made only in exceptional circumstances.

### Grounds for reassignment in family or civil cases

- conflict of interest
- the provider has insufficient time available
- there are reasons to believe the provider is unable to undertake adequate preparation
- the provider may need to seek a significant adjournment (providers are expected to decline assignments if necessary to keep workloads manageable)
- a genuine breakdown in professional relationship such that the case is unable to be advanced
- the aided person misleads or deceives a provider in a material respect to the extent that the provider is required to withdraw on ethical grounds
- other exceptional circumstances.

### Grounds for reassignment in criminal cases

IF THE ASSIGNMENT IS REASSIGNED DUE TO:	THEN...
<ul style="list-style-type: none"> <li>• being outside the providers scope of practice</li> <li>• the provider not having enough time for the type of case</li> <li>• a change in case categorisation to a higher provider approval level</li> <li>• a Commissioner error in the assignment</li> <li>• the provider being unavailable for any case</li> <li>• a conflict of interest</li> <li>• a breakdown of relationship</li> <li>• the client misleading or deceiving the provider in a material respect</li> <li>• the case transferring to another court</li> <li>• the client being dangerous</li> <li>• an exceptional circumstance</li> </ul>	<p>the provider will be offered a replacement assignment at their next turn on the assignment list.</p>
<ul style="list-style-type: none"> <li>• the provider being suspended or cancelled</li> </ul>	<p>the provider will lose their turn and not receive a replacement assignment.</p>

Where the categorisation of the case changes the lead provider must notify Legal Aid Services promptly. If the change is to a PAL3 or PAL4 then the aided person may choose another lawyer.

For PAL 1 or PAL 2 cases, where the aided person requests a new provider and the request is approved, a new provider will be assigned from the rotational assignment list.

For PAL3 or PAL4 cases, where an aided person requests a new provider and the request is approved, then one will be assigned by rotation if they have previously been assigned a preferred

lawyer. Where they have not been assigned a preferred lawyer, they may be assigned one. If the preferred lawyer requests reassignment on grounds outside of the aided person's control such as ill health, conflict of interest or other ethical impediment, the aided person may nominate a second preferred lawyer.

### **Transfer to another court or aided person's change of location**

Where proceedings are transferred to another court or the aided person has relocated, the provider is expected to notify the Commissioner of the changed location if a reassignment may be required. This is also the expectation for AODT court proceedings. Cases requiring a PAL1 or PAL2 provider are usually reassigned to a provider next on the rotational assignment list for that court. For a case requiring a PAL3 or PAL4 provider, and for family and civil cases, consideration will be given to the appointment of an agent with the appropriate provider listing approval where the lead provider will continue to be responsible and provide for an appropriate level of supervision.

Where a proceeding is transferred to the nearest District Court or High Court in accordance with ss 72 - 74 of the Criminal Procedure Act 2011, the lead provider can maintain the assignment. For example, a proceeding may be transferred from a District Court that does not have jury trial jurisdiction, to the nearest District Court that does. Where this occurs, travel costs may be claimed in accordance with the travel disbursements policy.

Where the case has progressed, travel costs may be considered if maintaining the assignment can be justified. This may include a special relationship of trust or provider expertise/specialised skills set. Consideration will also be given to the anticipated financial cost of reassignment such as duplication of work compared to the likely cost of travel.

If the assignment is maintained the Commissioner may limit the amount of travel costs that can be claimed and terminate the assignment once this is exceeded. The Commissioner may also agree to maintain the assignment if the lead provider undertakes to cover their own travel costs.

## **Appointment of second counsel (criminal)**

### **Types of second counsel**

Second counsel may be appointed, on request, if the complexity of the proceedings warrants it.

There are two types of second counsel:

- co-counsel (provider with equal listing or higher)
- junior counsel (provider with a lower listing)

### **Co-counsel**

The appointment of co-counsel may be considered if there are legal and evidential issues of significant complexity, there is an extremely high volume of disclosure and evidential material, the Crown has two or more senior prosecutors due to the level of complexity, or the trial is going to take longer than a month.



If approved second counsel is expected to continue with the trial if for any reason the lead counsel is unable to complete the trial. This means that co-counsel must have the equivalent listing category or higher.

### Junior counsel

Junior counsel may be appointed for cases if there are numerous charges issues of law or the evidence is complex or there is a substantial volume of documentary evidence. The Crown may also be represented by at least two counsel. Such counsel will be of a lower listing approval category than the lead provider and will be remunerated up to their own listing approval category (not the proceedings category of the case).

In Court of Appeal and Supreme Court cases, where fixed fees have been replaced with a grant of hours, or it is a high-cost case, the appointment of one junior counsel to attend the hearing of the appeal is pre-approved where research or preparation has been delegated to them prior to the hearing. The pre-approval is conditional on the lead provider believing that the assistance of junior counsel at the hearing is justified and that the junior counsel's research/preparation hours have or will be invoiced against the hours previously approved for the grant.

#### JUNIOR COUNSEL MAY:

- lead evidence (the lead provider must be present)
- cross-examine witnesses (the lead provider must be present)
- appear at interlocutory hearings
- organise witness evidence and files
- interview witnesses
- undertake legal research
- make bail applications
- attend pre-trial conferences
- attend call overs and adjournment applications.

The junior counsel takes a secondary role under the supervision of the lead provider. However, junior counsel is not permitted to undertake the substantive hearing even if the lead provider is unavailable.

## Public Defence Service assignments

The Public Defence Service (PDS) is independent legal representation using salaried providers to provide services for criminal legal aid cases.

The PDS will provide legal aid services where:

- the criminal charges are heard in a court where PDS provide services
- assignment is from the criminal rotational assignment list for cases requiring a PAL1 to PAL4 provider
- they have been assigned as preferred lawyer for parole, PAL3 or PAL4 criminal cases
- they have been assigned manually or as preferred lawyer for Court of Appeal or Supreme Court cases

## they have been assigned manually or as preferred lawyer for Court of Appeal or Supreme Court cases

### Refugee assignments

The RSU mediates the referral for legal aid by identifying the need for legal representation and explaining the assignment process to the applicant.

The RSU will ask Legal Aid Services to contact a lawyer on the claimants' behalf to assist with their claim for refugee and protected person status in NZ. The claimant can request for Legal Aid Services to choose a lawyer or contact their preferred lawyer.

The RSU also maintains a list of providers approved for refugee cases which is held at Auckland Airport, Mt Eden Corrections Facility and the Māngere Refugee Resettlement Centre. The following two forms from the RSU are usually received by email at the Auckland legal aid office:

- Request to assist in contacting a legal aid lawyer to represent a refugee and protection status claimant, **and**
- Request to invite a lawyer to represent a refugee and protection status claimant

Once notification of a potential claimant is received from the RSU, Legal Aid Services will contact a provider by rotation off the list (held by Auckland LAS) or the claimant's preferred provider and invite them to meet with the claimant. If available, the provider will meet with the claimant on a pro bono basis.

This is not a legal aid grant assignment and is not covered by any legal aid payment. As with all civil matters, the claimant must nominate their own lawyer and apply for legal aid. No further action is required. A legal aid application may or may not be submitted by the claimant.

# Maximum grant and fixed fees

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THE KEY SECTIONS OF THE ACT ARE:

- section 4(1): Interpretation: civil proceedings, criminal proceedings, legal services
- section 16: Decision on application for legal aid
- section 23(1): Maximum grant.

A maximum grant is specified for each approval, for all law types, including actual hearing time where applicable. This will be detailed in a Grants Schedule attached to the approval letter and ongoing correspondence (where applicable).

In criminal, family and some civil grants the maximum grant will usually comprise:

- approved hours and/or fixed fees for the activities in the [Fixed Fee Schedules](#), and
- the amount (if any) of pre-approved disbursements.

All applications for criminal legal aid received from 5 March 2012 will be managed as a fixed fee, fixed fee plus or High cost case. The maximum grant for fixed fee cases comprises set dollar amounts for specified activities and pre-approved disbursements. For fixed fee plus cases the maximum grant contains a mixture of fixed fees, fees approved on an hourly basis and disbursements requiring prior approval. The maximum grant for a High cost case is set on an hourly basis.

Applications for family legal aid received from 23 July 2012 will be managed as a fixed fee, fixed fee plus or non-fixed fee case. The maximum grant for fixed fee cases comprises set dollar amounts for specified activities (as per the fixed fee schedules) and pre-approved disbursements. For fixed fee plus cases, the maximum grant may contain a mixture of fixed fees, fees approved on an hourly rate basis and disbursements. The maximum grant for non-fixed fee cases is set on the basis of approved hours.

The policy and procedures outlined in this document apply to all applications for civil legal aid received on or after 31 March 2014 for proceedings that attract a fixed fee schedule.

## What are fixed fees?

Fixed fees aim to benefit providers and clients by providing transparency and certainty and ensuring that payments to providers are consistent across the country.

Instead of paying providers an hourly rate, fixed amounts are paid for completing specific activities. Fixed fees do not differentiate between providers' levels of experience.

The framework recognises that while few cases are identical, they all move through consistent and well-defined stages of preparation, though some may require additional specific activities.

For criminal cases, different fixed fees will be payable depending on the seriousness of the charges faced by the legally aided client. The fee structure varies between Crown prosecution and Police prosecution proceedings, but both structures allow providers to claim fixed fees for all activities associated with a standard case. The fixed fee structure for Police prosecution proceedings has been specifically designed to support early preparation and timely disposal of cases.

Criminal fixed fees were introduced as part of a range of initiatives to deliver savings, agreed to by Cabinet in February 2011 (ref CAB Min (11) 3/6).

### What are 'fixed fee plus' cases?

Where the fixed fees payable are shown to be inadequate for a particular activity, an amendment to the legal aid grant may be sought. The amendment must meet specific criteria, and if approved, the applicable fixed fee will be replaced by hours at the provider's applicable hourly rate.

An amendment is also required when the fixed fee schedules state that an estimate is required for a particular activity or when prior approval is required for a disbursement.

A case will be referred to as a fixed fee plus case when an amendment is approved.

**Note:** A case may comprise a mixture of fixed fees and payment on an hourly rate basis. There are different [invoicing requirements](#) and [timeframes](#) for these services.

### Application form

Where a legal aid applicant is requesting aid for both fixed fee and non-fixed fee proceedings, separate applications should be submitted for each type of proceeding. This is because fixed fee and non-fixed fee proceedings are considered under different frameworks and if aid is approved the proceedings will be managed under separate grants.

The 'cost of services' section of the application form for family legal aid does not need to be completed for a fixed fee case. This section is only completed in the following situations:

- for a non-fixed fee case
- where a fixed fee is considered inadequate and is sought to be replaced by approved hours when aid is initially applied for (i.e. for a fixed fee plus case), or where a disbursement requiring prior approval is requested.

### The fixed fee schedules

Each fixed fee schedule is comprised of 'activities', 'fees' and 'tasks'. For each grant of aid, the Grant Schedule sets out the fees available for the particular case. No other fees are payable in addition to the fixed fees set out in the applicable schedule, with the exception of pre-approved disbursements.

All amounts/rates in the fixed fee schedules are GST exclusive.

When a new matter under a different Act is added to the existing grant these proceedings will attract the relevant fixed fee schedule

## Fixed fee schedules - ACC

There are two fixed fee schedules applicable to ACC cases, where the application for legal aid was received on or after 31 March 2014.

ACC grants of aid are managed under one of the following case management levels:

- **Pre-fixed fee** – applications for civil legal aid for ACC cases received prior to 23 July 2012 which the pre-fixed fee framework continues to apply

- **Fixed fee** schedule proceedings–
  - new cases from 31 March 2014, or
  - cases that were received on or after 23 July 2012 and that were open as at 31 March 2014
- **Fixed fee plus** – fixed fee cases where an amendment to grant has been approved.

Legal aid grants for ACC appeals to the High Court and Court of Appeal are managed outside the fixed fee framework.

## Fixed fee schedules – Employment Relations Authority

All Employment Relations Authority (ERA) applications received on or after 2 March 2015 will be managed under the fixed fee framework.

The Employment Relations Authority applications cover mediation, as well as the investigation of the ERA itself.

## Fixed fee schedules - Family

Family grants of aid are managed under one of the following case management levels:

- **Pre-fixed Fee**– applications for family legal aid received prior to 23 July 2012 for which the pre-fixed fee framework continues to apply
- **Non-fixed fee** – applications for family legal aid received on or after 23 July 2012 for proceedings that do not attract a fixed fee schedule
- **Fixed fee** schedule proceedings–
  - new cases from 31 March 2014, or
  - cases that were received on or after 23 July 2012 and that were open as at 31 March 2014
- **Fixed fee plus** – fixed fee cases where an amendment to grant has been approved.

The table below sets out the proceedings that are managed as fixed fee cases and those that are managed as non-fixed fee cases:

Fixed Fee	Non-Fixed Fee
Adoption	Family Protection Act/Testamentary Promises
Care of Children/Guardianship	Hague Convention

Oranga Tamariki	Intellectual Disability
Family Violence	Mental Health
Paternity	Substance Addiction Act
Maintenance/Child Support	Appeals
Protection of Personal & Property Rights	
Relationship Property	

There are nine family fixed fee schedules. Each fixed fee schedule applies to proceedings under the Acts for which legal aid is available. For example, the Adoption schedule will apply to proceedings under the Adoption Act 1955. Similarly, the Care of Children/Guardianship schedule will apply to all proceedings under the Care of Children Act 2004 (except for Hague Convention and Appeals).

Family Violence proceedings are covered by two separate schedules - Family Violence (Applicant) and Family Violence (Respondent). The Maintenance schedule covers proceedings under the Family Proceedings Act 1980 and the Child Support Act 1991.

The Pre-Proceedings Settlements fee provides funding for settlement of legal disputes prior to proceedings being issued. The fee can only be claimed where the matter is resolved at this stage and cannot be claimed in conjunction with any other schedule. The exceptions to this are:

- the Relationship Property and Paternity schedules - each of these contain their own pre-proceedings stage and so the separate Pre-Proceedings Settlements fee does not apply in these cases
- the Pre-Proceedings Settlement fee does not apply to Care of Children Act proceedings that have been directed onto the new Family Justice tracks on or after 31 March 2014.

Each schedule is divided into 'stages', which are comprised of various 'activities'. Each activity has an associated fee and 'tasks' that are to be completed for that particular activity. All amounts/rates in the fixed fee schedules are GST exclusive.

For each grant of aid, the Grant Schedule will set out the fees available for the particular case.

In places, an estimate is required for a particular activity; this can be applied for using an amendment to grant.

If your case is difficult or complex, you can apply for higher fees than the fixed fee via an amendment to grant. If successful, you will receive fees paid on an hourly basis.

In addition to fixed fees, you can claim disbursements where you need to pay for services to assist your case.

#### INTERLOCUTORIES (WITH OR WITHOUT A HEARING)

The definition of an interlocutory is set out in Clause 8 of the Family Court Rules 2002 as:

- an application in proceedings or intended proceedings for an order or a direction relating to a matter of procedure or for some relief ancillary to the orders or declarations sought in the proceedings or intended proceedings and

(b) includes:

- (i) an application for a rehearing, and
- (ii) an application to review an order made, or a direction given, on an interlocutory application.

Depending on the schedule, fees can be claimed for interlocutories for these reasons:

- (a) where they need to be prepared but will not progress to a hearing (\$140, repeatable)
- (b) where they need to be prepared for a hearing (\$80 per anticipated half hour of hearing time, repeatable)
- (c) where there is a hearing (\$67 per half hour, repeatable).

Examples of key interlocutories that can be claimed for, and whether they are examples which would progress to a hearing, are listed below. This is not a definitive list.

Type of interlocutory	Eligible to claim a fee?	Could involve a hearing?
Substituted service	Yes	
Transfer of proceedings	Yes	Yes
Leave to apply – this can be considered broadly e.g. not just leave to file applications, but also others such as leave to apply for an appeal	Only if not requested in stage one	
Dispense with counselling	Only if not requested in stage one	
Reduction of time	Only if not requested by provider at the applications/orders stage	
Appointment of litigation guardian	Only if not requested at the applications/orders stage	
Application for directions about admissibility of evidence	Yes	Yes
Withdraw as counsel — under Family Court rule 88	Yes	
Notice of discontinuance	Yes	
Dispense with service	Yes	
Application for order for sale	Yes	Yes
Application for directions in respect of whether subject person should be served with the proceedings and whether they should appear in Court	Yes	Yes
Interim orders regarding contact	No	

We have not included interim contact orders as an interlocutory because:

- where a client is defending an application for a parenting order their provider can claim the application fixed fee
- if a client is prevented from having contact, the provider can file a cross application (a second proceeding)
- if interim contact orders were to be included as interlocutories, this could create confusion about how to deal with such applications.

## FAMILY COST CONTRIBUTION ORDER SUBMISSIONS FEE

There is currently no fixed fee available in the Family fee schedules for making submissions on Family Cost Contribution Orders (CCOs).

CCOs should only be made against legally aided parties where the exceptional circumstances under section 45(3) of the Legal Services Act 2011 apply. In these cases, the legal aid provider may be required to make submissions on behalf of the legally aided party in response to the CCO.

In these instances, legal aid providers can:

- claim a flat fee of **\$140** for making and responding to CCO submissions
- claim the fee using **invoice form 10 - Family Legal Aid non-fixed fees**

An invoice is sufficient, and providers are not required to submit evidence of the CCO submissions.

## Pre-fixed fee family granting

Pre-fixed fee family granting applies to applications for family legal aid received prior to 23 July 2012 and to proceedings managed outside the fixed fee framework.

The maximum grant will depend on the proceedings type and whether or not the provider expects to exceed the maximum guideline hours for the proceeding. Generally, the maximum grant will be set at the guideline hours for standard family granting. If a case falls outside the standard family cases then it will be taken out of standard family granting and prior approval will be required for ongoing work.

The key features of pre-fixed fee family granting include:

- no requirement for prior approval between steps within family proceedings. That is providers will be able to complete such work as required provided it falls within the agreed maximums in the family proceedings steps
- the maximum grant is specified as the guideline hours for the required activities within each step for the proceeding
- limited documentation requirements that is initial evidence of the proceedings and the information provided on the interim and final invoices
- once a grant is approved work may be undertaken up to the maximum guideline hours/fees specified for each activity within each step in a proceeding – unless approval is specifically stated as being required
- unused hours cannot be carried forward to the next step however a balancing of ‘overs and unders’ may be applied within a step if there are two or more completed activities and the total hours being claimed across the completed activities must be equal to or within the guideline hours available
- the ‘additional factors’ and ‘use of interpreters’ activities do not qualify as these top up the guideline hours.

The key features of non-standard family granting include:

- type of proceedings e.g. mental health



- family proceeding where the provider intends to exceed the guideline hours
- prior approval to move between steps within the same proceedings
- expressing the maximum grant in dollar terms for specific items
- requiring detailed documentation at each step in the proceedings – initial grant, amendments, interim and final invoices.

## Hearing time – ACC and Family

Providers are remunerated for hearing time in half hourly blocks. Hearing time for all types of hearings is paid at the rate of \$67 per half hour.

Providers must identify the number of half hour blocks being claimed and should round hearing time upwards to the nearest half hour. For example, ten minutes of hearing time will be paid as one half hour block.

Time spent waiting for a review or appeal hearing or pre-Court Judicial meeting to begin can be included in a claim for hearing time, as below –

- up to two half-hourly units (one hour) relating to attendance at a pre-Court Judicial meeting or conference can be claimed without evidence, and this could include waiting time
- a single half-hourly unit can be claimed relating to time waiting for a defended, review or appeal hearing to begin (because the hearing is running late and negotiations are progressed in that time)
- providers can seek a fee for any additional waiting time in excess of the thresholds specified above through an amendment to grant. This will, naturally, be ‘after the event’
- it is difficult to provide ‘evidence’ of waiting time running over the specified thresholds, and so a statement is sufficient about the additional time and why it occurred.

## Fixed fee schedules – Criminal

Different fixed fees will be payable depending on the seriousness of the charges faced by the legally aided client. There are ten fixed fee schedules which set out the applicable fixed fees for cases ranging from those with a maximum penalty of non-imprisonment to proceedings before the Supreme Court.

No other fees are payable in addition to the fixed fees set out in the applicable schedule, with the exception of pre-approved disbursements. However, an amendment to grant may be approved where a fixed fee for a particular activity has already been claimed, but additional work is required for reasons outside of the provider’s control, that cannot be met with the fee already paid.

If a legal aid grant covers multiple charges, the applicable fixed fee schedule will be based on the most serious charge.

The table below sets out the schedule name, the case type and penalty, their interface with new Offence Categories and whether the matters are Crown or Police prosecutions.

Fee schedule	Case type and maximum penalty	Offence Category	Minimum required Criminal Provider Approval Level (PAL)	Crown / Police prosecutions
A	Judge alone, non-imprisonment	OC1	PAL1	Police
A	Judge alone, less than 2 years imprisonment	OC2	PAL1	Police
B	Judge alone, 2 years - less than 7 years	OC3	PAL1	Police
C	Judge alone, 7 years to 10 years	OC3	PAL1	Police
D	Judge alone or Jury trial elected, 2 - 10 years	OC3	PAL2	Crown
E	Judge alone or Jury trial, all cases 10+ years except schedule F	OC3	PAL3	Crown
F	Judge alone or Jury trial, life / liable for preventive detention	OC3	PAL4	Crown
F	Judge alone or Jury trial, life / Sch. 1 Criminal Procedure Act	OC4	PAL4	Crown
G	High Court appeals for sentence and conviction	N/A	Same as substantive matter	N/A
G	Applications to the Criminal Cases Review Commission where the right of first appeal from the original conviction is to the District Court or High Court	N/A	PAL3 (or PAL4 if the original conviction was PAL4)	N/A
H	Appeals to the Court of Appeal	N/A	N/A	N/A
H	Applications to the Criminal Cases Review Commission where the right of first appeal from the original conviction is to the Court of Appeal.	N/A	N/A	N/A
I	Appeals to the Supreme Court	N/A	N/A	N/A
J	Parole matters	N/A	PAL2	N/A

A fixed fee schedule comprises fixed fees representing the core activities expected to be carried out on a case which may be payable depending on the nature of the case.

Fee schedules introduced on 3 July 2017 for schedules A to C and D to F include certain fixed fees that are repeatable and can be claimed per occurrence of that activity. Repeatable fixed fees can be identified on the fee schedule by an asterisk. The granting notes specify if there are a maximum number of times per occurrence each fee can be claimed. After the maximum number is exceeded, an amendment to grant is required. Please refer to the granting notes in the [Criminal Fixed Fee schedules](#).

Where preventive detention is intimated at sentencing, a PAL4 lawyer will be needed because of the change to the Offence Category. Sentencing fees can then be claimed from Schedule F, in recognition of the additional work required in respect of sentencing. All other fees for work completed prior to the change to the offence category must be claimed from the previously applicable schedule. Where the legally aided person is on their final warning for a serious violent crime, i.e. a third strike, a higher criminal provider approval is needed because of the change to the Offence Category. The relevant Offence Category for a third strike becomes OC3 where a PAL4 lawyer is required.

If a client in a PAL1 case elects trial by jury a provider may request that the grant be updated to PAL2 to reflect the election. The relevant PAL1 schedule applies to services provided before the election. Where the assigned provider is not approved for cases requiring a PAL2 provider, the provider may apply for a limited approval to continue representing the client. The application form for approval

and step-by-step guide can be found on the Ministry website here: [Become a legal aid lawyer | New Zealand Ministry of Justice](#)

**Note:** The fixed fee policy does not apply to cases being managed under the high cost case framework. Refer to the [High Cost Case Management policy and procedures manual](#) to see the policy for High Cost Cases.

Applications to the Criminal Cases Review Commission where the right of first appeal from the original conviction is to the District Court or High Court require a PAL3 or a PAL4 lawyer but the PAL level of the case is the same as the original conviction.

### **Schedules A–C (Police prosecution proceedings)**

A fixed fee will be payable for the following stages:

- Administration/Case Review
- Other matters
- Pre-trial activities
- Trial and Sentencing
- Interlocutory appeals to the High Court
  - appeals against pre-trial decisions.

A fee is payable upon completion. However, a fee may be claimed when a significant amount of work has been undertaken in good faith, even if the stage/fee has not been completed, for reasons outside of the provider's control.

### **HEARING TIME INCLUDING WAITING TIME**

'Time' is payable in half hour blocks, rounded up to the nearest half hour.

Claims for waiting time are accepted as part of claims for actual appearances in hearings before a Judge or Registrar. Waiting time begins when the provider is required to be in the courtroom. This:

- includes waiting time for the jury to deliver the verdict
- excludes waiting time where the Judge or Registrar has excused counsel.

If more than one hour's waiting time is claimed per activity (e.g. waiting time for trial or waiting time for sentencing) the following information is required:

- a summary of both the waiting time and hearing time on the day of appearance – date and times
- an explanation of the circumstances is also required. This must include:
  - confirmation that the provider was unable to undertake any other work while waiting
  - confirmation that the provider made enquiries to the court about the delay
  - reasons for the delay.

Where a client fails to attend a scheduled appearance, the provider can claim reasonable and actual time for waiting for the client, up to one hour. No evidence is required. Waiting time in addition to one hour in situations where a client fails to attend a hearing can be claimed via an amendment to grant.

### **Schedules D–F (Crown prosecution proceedings)**

A fixed fee will be payable for the following stages:

- Administration/Case Review
- Other matters
- Pre-trial activities
- Trial and sentencing
- Interlocutory appeals to the High Court
  - appeals against pre-trial decisions.

A fee is payable upon completion. However, a fee may be claimed when a significant amount of work has been undertaken in good faith, even if the stage/fee has not been completed, for reasons outside of the provider's control.

#### HEARING TIME INCLUDING WAITING TIME

Hearing time is payable in addition to the fixed fee. Where hearing time is applicable, it should be totalled and rounded up to the nearest half hour for each fee/stage.

Claims for waiting time are accepted as part of claims for actual appearances in hearings before a Judge or Registrar. Waiting time begins when the provider is required to be in the courtroom. This:

- includes waiting time for the jury to deliver a verdict
- excludes waiting time where the Judge or Registrar has excused counsel.

If more than one hour's waiting time is claimed per activity (e.g. waiting time for trial or waiting time for sentencing) the following information is required:

- a summary of both the waiting time and hearing time on the day of appearance – date and times
- an explanation of the circumstances is also required. This must include:
  - confirmation that the provider was unable to undertake any other work while waiting
  - confirmation that the provider made enquiries to the court about the delay
  - reasons for the delay.

Where a client fails to attend a scheduled appearance, the provider can claim reasonable and actual time for waiting for the client, up to one hour. No evidence is required. Waiting time in addition to one hour in situations where a client fails to attend a hearing can be claimed via an amendment to grant.

#### **Schedule G (appeals to the High Court)**

A fixed fee will be payable for the following:

- Pre-proceedings
- Conferences
- Preparation of appeals
- Leave to appeal to Court of Appeal.

The fixed fees are payable either as a full fee on disposal, or an interim fee plus a completion fee. Hearing time is payable in addition to the fixed fee. Where hearing time is applicable, it should be totalled and rounded up to the nearest half hour for each fee/stage.

A full fee will be payable via a final invoice after disposal and where no interim fee has been paid. An interim fee will be payable when the case has been substantially progressed. A completion fee will be payable via a final invoice after disposal and where an interim fee has been paid.

Where a case is reassigned to a new provider, the first provider may claim a termination of assignment fee, provided that he or she has substantially progressed the case prior to reassignment and no interim fee has been paid. A case is considered to have been substantially progressed when disclosure has occurred.

Different amounts are payable, depending on the type of appeal.

Schedule G will also apply to applications to the Criminal Cases Review commission where the right of first appeal from the original conviction is to the District Court or High Court. However, all schedule G fees will be inactivated except for the 'Make an application'.

If additional funding is required to prepare the application to the Commission, or to assist the applicant through the Commission's process, the provider must submit a request for an amendment to grant in the prescribed manner.

If the Commission refers the case to the High Court, a new application for legal aid will be required.

#### **Schedule H (appeals to the Court of Appeal)**

A fixed fee will be payable for the following:

- Preparation of summary of issues to be raised on appeal
- Conferences
- Preparation of appeals.

A fee is payable upon completion. However, a fee may be claimed when a significant amount of work has been undertaken in good faith, even if the stage/fee has not been completed, for reasons outside of the provider's control.

Hearing time, rounded up to the nearest hour or two hours as applicable, is payable in addition to the fixed fee. Where hearing time is applicable, it should be totalled and rounded up for each fee/stage.

Schedule H will also apply to applications to the Criminal Cases Review commission where the right of first appeal from the original conviction is to the Court of Appeal. However, all schedule H fees will be inactivated except for the 'Make an application'.

If additional funding is required to prepare the application to the Commission, or to assist the applicant through the Commission's process, the provider must submit a request for an amendment to grant in the prescribed manner.

If the Commission refers the case to the Court of Appeal, a new application for legal aid will be required.

#### **Schedule I (appeals to the Supreme Court)**

A fixed fee will be payable for the following:

- Preparation of application for leave to appeal
- Conferences

- Preparation of response to application for leave to appeal
- Substantive appeal.

A fee is payable upon completion. However, a fee may be claimed when a significant amount of work has been undertaken in good faith, even if the stage/fee has not been completed, for reasons outside of the provider's control.

Hearing time, rounded up to the nearest hour or two hours as applicable, is payable in addition to the fixed fee. Where hearing time is applicable, it should be totalled and rounded up for each fee/stage.

### **Schedule J (Parole — criminal matters)**

A fixed fee will be payable for the following:

- Proceedings before the NZ Parole Board
  - Postponement order
  - Recall
  - Non-release orders
  - Other proceedings entitled to counsel
  - Extended supervision orders
  - Specialist reports
- Grounds for parole appeal (interim grants only)
- Substantive appeal
  - Appeals to the High Court from certain decisions of the Parole Board
  - Appeals to the Court of Appeal from the sentencing court
- Other matters
- Reassignment.

A full fee will be payable via a final invoice after disposal and where no interim fee has been paid. An interim fee will be paid when the case has been substantially progressed. A completion fee will be payable via a final invoice after disposal and where an interim fee has been paid.

Hearing time, rounded up to the nearest half hour, is payable in addition to the fixed fee. Where hearing time is applicable, it should be totalled and rounded up to the nearest half hour for each fee/stage.

Where a case is reassigned to a new provider, the first provider may claim a termination of assignment fee, provided that he or she has substantially progressed the case prior to reassignment and no interim fee has been paid. The fee is payable when a significant amount of work has been undertaken in good faith, even if the stage/fee has not been completed, for reasons outside of the provider's control. Different amounts are payable, depending on the type of parole proceedings.

### **Applications with a mixture of charges, filed on different dates**

Any charges filed before 1 July 2013 will be managed under the pre-Criminal Procedure Act 2011 framework. Any charges added to a grant which has pre-CPA charges will also be managed in accordance with pre-CPA procedures. This is the case even if the added charges were filed on or after 1 July 2013.

## Absconding, warrant to arrest issued

If a client absconds for more than one month, a new application for legal aid is required and if approved, a provider will be assigned by rotation.

FOR CHARGES FILED ON OR AFTER 1 JULY 2013

If...	Then...
If the client absconds but voluntarily re-appears or is arrested <b>within</b> one month.	<ul style="list-style-type: none"><li>• The legal aid file remains open</li></ul>
If the client absconds but voluntarily re-appears or is arrested <b>later</b> than one month.	<ul style="list-style-type: none"><li>• The original legal aid file is closed after 1 month</li><li>• A new application is completed</li><li>• If approved, the case is assigned to a new provider under the criminal case rotational assignment policy.</li></ul>
If the client absconds and voluntarily re-appears or is arrested more than <b>six months later</b>	<ul style="list-style-type: none"><li>• The original legal aid file is closed after 1 month</li><li>• A new application is completed</li><li>• If approved, the case is assigned to a new provider under the criminal case rotational assignment policy.</li></ul>

## Interim grants

An interim grant is an approval of a small allowance to enable the need for a full grant to be determined as provided under s 16(1)(b) of the Act.

Approval will be given only where an informed decision as to merits or prospects of success is required such as in complex civil cases or grounds for an appeal. Providers will note this is not a fast-tracking process, neither is it for the general gathering of information.

If the interim grant is approved then the specific purpose, maximum amount and conditions of the grant will be advised. Any amendment to the grant will be considered only if it is consistent with the original purpose of the interim grant.

The repayment obligation is the same as for a full grant, however, it will not be enforced any earlier than 23 days after the full grant decision is made. The final repayment amount will be set when the provider's final invoice (if applicable) is approved.

The interim grant does not establish an ongoing entitlement to legal aid. It simply ceases when the Commissioner either approves or declines the application for a full grant or decides that the interim grant should cease as appropriate. An appropriate situation may be where an applicant specifically requests that aid be stopped, or the Commissioner is satisfied that the applicant has intentionally or negligently made an untrue or misleading statement about his or her resources.

When a full grant is approved the same lead provider will be assigned unless there are reasons to assign someone else. The start date for the full grant will be the letter date informing the provider and applicant of the full grant decision.

The statutory withdrawal process does not apply to this interim grant process including the applicant's right to make any submissions.

An Interim Grant schedule is available where legal aid has been granted on an interim basis to enable a provider to determine whether a case has merits or prospects of success. The interim grant is not relevant to proceedings under the Care of Children Act (including Guardianship) in ON NOTICE cases.

## Waiver and refund of civil court fees

Legally aided persons with provider assistance may apply to the Courts to have civil court fees waived or refunded. Application forms can be found <https://www.justice.govt.nz/courts/going-to-court/court-fees/apply-for-help-to-pay-court-fees/>

## Amendment to grant

THE KEY SECTION OF THE ACT IS:

- section 28: Application for amendment to grant of legal aid.

Section 28 of the Act allows for an application for an amendment to be made in the prescribed manner at any time before the matter to which the application or grant relates is finally disposed of by the relevant body.

An application is deemed to be made on the date it is received. The day a matter is finally disposed of is the date it is concluded or finished in some way by a court or other forum. If the application has been faxed or hand delivered on the disposal date any time up to midnight then the application is deemed to have been received before the disposal date.

If the application is received outside 15 working days after the disposal date then the application will be rejected under s 28(2)(a) of the Act.

If the application is received within 15 working days after the disposal date the provider will need to address what special circumstances caused the delay and whether reasonable steps were taken to apply before the disposal date. If these requirements are not made then aid will be refused under s 28(2)(b) of the Act.

Examples of circumstances which will not be accepted are that the provider:

- forgot
- gave other work priority
- was otherwise too busy
- was on holiday
- was indisposed and his/her work was not allocated to another member of the law firm.

Additional charges for criminal cases are generally dealt with by way of an amendment to grant. Under certain fixed fee schedules providers may seek additional repeats of fixed fees. Where additional repeats are not available, providers are not entitled to charge for multiple fees for the



same activity. If the charge is in a different court and/or there is a co-accused and/or it is running separately/different stages, then a new legal aid application will be required.

A provider is required to apply for an amendment to grant when the maximum grant is likely to be exceeded; for example, where the guideline hours/fixed fees for one or more activities within a step/stage in a proceeding are likely to be exceeded because of the nature and complexity of the matter.

When determining the need to seek an increase in the maximum grant, the provider will need to consider and confirm the following.

- the services required are not covered by the guideline hours/fixed fees
- the services required are legal aid services
- there is merit in continuing with the services required
- the services required may be subject to special circumstances.

The amendment to grant form is required when an amendment is sought:

- to replace a fixed fee
- in addition to a fixed fee
- for a disbursement requiring prior approval
- for activities that require an estimate.

#### **Amendment to grant - Criminal cases**

An approved amendment on a fixed fee case moves the case to management as a fixed fee plus case. The threshold for approving an amendment requires providers to demonstrate that the activity requires significant additional work outside the fixed fee funding.

Where a criminal grant of aid is identified as having the potential to become high cost, it will be managed more closely from the outset. All amendments to the grant will be considered on a staged basis prior to the work being undertaken. The High Cost Case Management (HCC) framework applies to criminal grants approved from 3 October 2011 which meet the specified criteria. Criminal grants approved prior to 3 October 2011 may also be included on a case-by-case basis. For a quick guide to key policies and procedures please refer [here](#) for an information pack.

Amendment requests submitted on a fixed fee or fixed fee plus case will be on the Criminal amendment form (Form 51). This form will be required when an amendment is sought in relation to:

- a fixed fee
- a disbursement requiring prior approval
- an estimate, as required for schedule F trial preparation, schedule I preparation for appeal hearing and schedule J parole appeal preparation.

If a provider is seeking an amendment in relation to a fixed fee, they will need to select the applicable amendment criteria and provide supporting reasons as to why significant additional work is required.

If a provider is seeking an amendment in relation to an additional fixed fee or a disbursement requiring prior approval, they will need to detail the reasons as to why significant additional work is required or why the fixed fee is inadequate.

If a provider is seeking an amendment in relation to an activity requiring an estimate, they will need to briefly describe the work to be completed.

All amendment requests will need to include details of the funding sought.

### **Significant additional work – Criminal cases**

In some cases, the fixed fee will not be sufficient because significant additional work is required. In those cases, providers may apply for an amendment to the grant.

A case may be made up of a mixture of fixed fees and payment on an hourly rate basis.

An amendment is not usually available to seek payment for activities where the fixed fee for those activities has already been claimed. However, an amendment may be approved where a fixed fee for a particular activity has already been claimed, but significant additional work is required for reasons outside the provider's control, that cannot be met with the fee already paid.

Providers seeking an amendment to a fixed fee must submit the request on the Criminal Amendment' form (Form 51).

### **AMENDMENT CRITERIA**

The Commissioner will amend the fixed fee where significant additional work is required. The Commissioner recognises that significant additional work is required where a provider demonstrates that:

- two or more case-specific criteria are present or
- one or more customer-specific criteria are present.

Where these criteria are not present, the Commissioner may still amend the fixed fee where it is demonstrated that some other special circumstances requiring significant additional work are present.

Where significant additional work is required, the fixed fee will not be paid. Instead, the maximum grant will be administered on the basis of the provider's guideline hourly rate.

### **CASE-SPECIFIC CRITERIA**

For a Police prosecution proceeding (schedules A–C), the Commissioner recognises that significant additional work is required if the case is characterised by two or more of the following:

- disclosure index more than three pages long and more than 100 full pages of disclosure
- more than 60 pages of disclosure and more than half of this text transcription, photocopied hand-written material, or transcription of interviews on DVD
- more than five charges to be defended, especially where these are serious and there are complexities such as some warrants not issued locally
- significant new points of law to be researched
- co-accused defendants
- five or more witnesses, regardless of whether they are to appear or be read
- three or more prosecution interviews with the defendant or with a witness
- Judge-alone trial set down for more than a full day.

For a Crown prosecution proceeding (schedules D–F), the Commissioner recognises that significant additional work is required if the case is characterised by two or more of the following:

- more than 200 full pages of disclosure
- more than 100 pages of disclosure and more than half of this text transcription, photocopied hand-written material, or transcription of interviews on DVD
- more than five charges to be defended
- significant new points of law to be researched
- co-accused defendants
- five or more witnesses, regardless of whether they are to appear or be read
- three or more pre
- section interviews with the defendant or with a witness
- jury trial set down for more than three days.

For appeal and parole proceedings (schedules G–J), the Commissioner recognises that significant additional work is required if the cost of completing activities covered by the fixed fee (based on hours at the provider’s guideline hourly rate) exceeds the fixed fee payable by more than 25%.

#### CUSTOMER SPECIFIC CRITERIA

For all cases, the Commissioner recognises that significant additional work is required in the following situations:

- highly vulnerable defendant or complainants, such as children
- defendant subject to treatment orders (serious mental health problems or a serious intellectual disability)
- defendant with significant barriers to communication throughout preparation, including those that require an interpreter/translator (e.g. significant sensory impairment or English as a second language requiring an interpreter/translator).

**Note:** where a fixed fee is replaced with payment on an hourly basis, payment for hearing time will continue to be based on the half-hourly rates set out in the applicable fixed fee schedules.

#### SPECIAL CIRCUMSTANCES

Where relevant case-specific and customer specific criteria are not present, the Commissioner may still amend the fixed fee where it is demonstrated that some other special circumstances requiring significant additional work are present.

*Example:*

- *A case has 200 pages of disclosure, four witnesses and four charges to be defended. Despite the case not meeting the listed amendment criteria, these factors may mean that the case will require significant additional preparation time for trial.*
- *parole proceeding where the client displays verbally aggressive, abusive or obstructive behaviour. Despite the case not meeting the case or customer specific criteria, these*

*factors may mean that the case requires significant additional preparation time for hearing*

- *police prosecution case has 4 charges being defended and a disclosure index more than three pages long and 900 full pages of disclosure. Despite the case not meeting the listed amendment criteria, these factors may mean that the case will require significant additional preparation time for hearing*
- *police prosecution case has 110 pages of disclosure; however, additional work is required as a result of engaging an expert, due to the nature of the evidence. Expert is required to consider electronic evidence and disclosure received and provide advice regarding the evidence required to be presented for hearing. Despite the case not meeting the listed amendment criteria, these factors may mean that the case will require significant additional time being required to brief the expert and discuss the expert's findings.*

Significant additional work may be required where a fixed fee for a particular activity has already been claimed but additional work is required for reasons outside of the provider's control that cannot be met with the fee already paid. The amendment request will be assessed in accordance with the above criteria. The fixed fee that has already been claimed for the activity will be taken into account as well as the amount of new work required.

*Example:*

- *the provider has claimed the fee for Trial. The Crown adds several charges to the matter that is soon to be heard before the Judge and jury. There is now further disclosure to be reviewed and significant additional preparation required prior to the trial. A further amendment to grant may now be claimed for the additional preparation time, even though the related fee has already been claimed and paid.*

#### OTHER SPECIAL CIRCUMSTANCES

An amendment to an additional fixed fee is not required to meet case-specific or customer specific criteria.

If seeking an amendment to an activity covered by an additional fixed fee, the provider must demonstrate why the fixed fee amount is inadequate to reflect the work involved in completing the activity. If the amendment is approved, the additional fixed fee will not be paid. Instead, payment will be administered on the basis of the provider's guideline hourly rate.

Usually, an amendment will be approved only where a fixed fee for that particular activity has not already been claimed. However, an amendment may be allowed where a fixed fee for a particular activity has already been claimed but additional work is required for reasons outside of the provider's control that cannot be met with the fee already paid.

The base fixed fees in the applicable schedule will still be payable.

Note: a request to amend the maximum grant may also be approved where a provider can demonstrate that certain activities are necessary to the conduct of a matter, but that these are not adequately covered by any of the available fixed.

## Amendment to grant - Family, ACC and Employment Relations Authority cases

An amendment to the fixed fee grant may be sought in the following situations:

- where the applicable fixed fee for an activity is considered inadequate
- where a disbursement requiring prior approval is required, and
- where the fixed fee schedules state that an estimate is required for a particular activity.

Providers seeking an amendment to a fixed fee or fixed fee plus case are required to submit the request on the applicable amendment to grant form, available [here](#).

Providers must:

- identify whether the amendment is sought to replace a fixed fee, in addition to a fixed fee, to seek approval for a disbursement, or relates to an activity that requires an estimate to be supplied
- identify the relevant amendment criteria where a fixed fee is sought to be replaced, provide reasons to support the criteria, and provide written justification as to why the fixed fee is inadequate
- identify the activity for which an estimate is required and describe the work to be undertaken and
- provide details and justification of the funding sought.

An approved amendment on a fixed fee case will result in the case being referred to as a fixed fee plus case.

Where an amendment is approved, the relevant fixed fee will not be paid. Instead, a set number of hours will be approved and the provider will be paid at their hourly rate for that particular activity.

Should a situation arise in which a provider has already claimed the fixed fee and an amendment is subsequently sought, this factor will be taken into account when Legal Aid staff make a decision on the request.

### Where the fixed fee is inadequate – Family cases

A new maximum grant will be set where a provider demonstrates that an applicable fixed fee is inadequate in reflecting the work involved in completing tasks covered by the fixed fee. Where an amendment is approved, the relevant fixed fee will not be paid. Instead, a set number of hours will be approved and the provider will be paid at their hourly rate for that particular activity.

If one or more of the following criteria are met, an amendment to grant may be approved:

#### CASE SPECIFIC CRITERIA

- alienation/deprivation factors that have a significant impact on the physical or psychological wellbeing of the legally aided person and/or subject children AND this results in additional significant preparation time for the relevant activity
- allegations/instances of sexual abuse, drug/alcohol abuse, family violence (in non-family violence proceedings) that would entail extensive correspondence with Oranga Tamariki and/or Police AND this results in significant additional preparation time for the relevant activity
- applications in respect of multiple children where circumstances are substantially different AND this results in significant additional preparation time for the relevant activity. For example, where Oranga Tamariki are involved and the children are placed with different caregivers therefore requiring multiple/lengthy affidavits

- multiple parties (three or more parties to the proceedings) AND this results in significant additional preparation time for the relevant activity. For example, grandparents applying for care and/or contact with subject child
- multiple witnesses (excluding the applicant and respondent) where multiple affidavits are required AND this results in significant additional preparation time for the relevant activity
- any other special circumstances not included in the above criteria that nevertheless requires additional funding AND which result in significant additional preparation time for the relevant activity. For example, relationship property matters involving trusts and/or companies, or where a litigation guardian is involved.

#### CUSTOMER SPECIFIC CRITERIA

- The customer suffers from mental illness and/or intellectual disability
- There are communication barriers
- The severity of injury/injuries has resulted in a permanent impairment

Where an amendment is approved, providers will not be able to claim the fixed fee for the activity to which the amendment relates. Should a situation arise in which a provider has already claimed the fixed fee and an amendment is subsequently sought, this factor will be taken into account when legal aid staff make a decision on the request.

#### Where the fixed fee is inadequate – ACC cases

If one or more of the following criteria are met, requiring significant additional work, an amendment to grant may be approved:

#### CASE SPECIFIC CRITERIA

- Complex or unusual factual/legal issues
- Work relating to a specialist report
- Allegations/instances of sexual abuse
- Severity of injury/injuries
- Difficult diagnoses requiring multiple specialists
- Complex technical, medical or medico-legal issues

#### CUSTOMER SPECIFIC CRITERIA

- The customer suffers from mental illness and/or intellectual disability
- There are communication barriers
- The severity of injury/injuries has resulted in a permanent impairment

#### SPECIAL CIRCUMSTANCES

Where relevant case-specific and customer specific criteria are not present, the Commissioner may still amend the fixed fee where it is demonstrated that some other special circumstances requiring significant additional work are present.

## Where the fixed fee is inadequate – Employment Relations Authority

If one or more of the following criteria are met, requiring significant additional work, an amendment to grant may be approved:

- Unusual and/or novel legal issues
- Exceptionally complex and lengthy factual issues.

### SPECIAL CIRCUMSTANCES

Where relevant case-specific and customer specific criteria are not present, the Commissioner may still amend the fixed fee where it is demonstrated that some other special circumstances requiring significant additional work are present.

Examples of where providers might consider applying for an amendment to grant include when –

- time is spent commissioning a specialist report and reviewing that report once delivered
- there are a large number of witnesses to be interviewed
- when the other party is particularly uncooperative and creates additional work

### Disbursements requiring prior approval

An amendment request must be submitted for disbursements requiring prior approval.

Non-lawyer costs may not be claimed as a pre-approved disbursement on a fixed fee case, as they are built into the applicable fixed fee. Where a non-lawyer provides services on a fixed fee plus case, those costs may be paid as a disbursement, subject to approval via an amendment request.

Where a disbursement requiring prior approval is sought, providers will not be required to establish that the case meets the amendment to grant criteria

The disbursements policy continues to apply to all remaining disbursements, in that prior approval is required by way of an amendment request. If the amendment is approved the case will become a fixed fee plus case. For criminal cases, an amendment request will be approved only if the provider can demonstrate that the disbursement is directly attributed to the conduct of the matter.

Where the fixed fee schedules states that a particular activity requires an estimate to be submitted, providers will not be required to establish that the case meets the amendment to grant criteria). For specific information on the disbursements policy, please refer to the legal aid disbursements policy.

**ACC note:** Specialist medical reports and psychiatric/psychologist reports are pre-approved for ACC cases unless it is:

- the second or subsequent report sought for the same client and related to the same injury
- expected cost of the report is greater than \$5,000 or
- sought from an expert who does not reside in New Zealand or Australia

If either of the two conditions outlined above apply, prior approval for a medical or psychiatric/psychologist report will be required by way of an amendment request.

**Criminal note:** for the purpose of seeking prior approval for calling from or to a mobile phone, providers need only to explain the situation rather than provide proof.

For the purpose of subsequently claiming the case-related costs of actual calls (either from a mobile to a legally-aided client or to the mobile of a legally-aided client), providers should retain evidence of their costs in the event of an audit or examination, but that evidence does not need to be submitted with the provider's invoice – this applies to all mobile phones including pre-paid, so long as records are available and are retained.

## Estimates

An estimate by way of an amendment request will be required for the specified activities as listed in the fixed fee schedules. An amendment to an estimate is not required to meet case-specific or customer specific criteria or the criteria required for approval of an amendment relating to a base fixed fee as set out above.

An estimate is required because these activities are so variable in nature that a fixed fee is not considered appropriate. These activities are identified in the fixed fee schedules as 'estimate required by amendment'.

Providers will need to advise the work to be undertaken and the funding sought. Providers will be remunerated at their applicable hourly rate.

Each estimate will be considered on a case-by-case basis. The key consideration is whether the funding sought is justified by the amount of work to be undertaken by the provider. It is accepted that the nature of the work to be undertaken for the specific activity is complex in itself however providers will need to include details such as:

- the issue in dispute that is requiring a court hearing
- the other party's position
- the length of the allocated fixture and
- any other relevant considerations.

## Authorised payments (top-ups)

THE KEY SECTION OF THE ACT IS:

### 1. section 105: Providers not to take unauthorised payments

A listed provider is not allowed to take payments from or in respect of a legally aided person unless authorised by the Commissioner or under the Act. On a case-by-case basis, and in exceptional circumstances, the Commissioner may permit a lead provider to accept a payment in addition to the grant of aid. The following circumstances may lead the Commissioner to authorise such a payment:

- where the services covered by the proposed top-up payment may provide material benefit to the client's representation, despite not being eligible or appropriate for payment under the grant
- a court has awarded costs in favour of the client in excess of the total cost of the grant, and the provider has sought permission to retain the difference – the 'top up' may be considered on the basis that it is the court's award in recognition of the clear merit of the case.
- In criminal cases, if refusing a top up would impact on the client's rights under the NZ BORA 1990.

A top-up payment is unlikely to be authorised where:



- the top up is to increase the provider's hourly rate of remuneration (this must be requested from Legal Aid Services)
- the source of the proposed payment is the aided person, their partner or arranged on a contingency basis (relying on a payment from the proceeds of proceedings)
- payment would be the result of additional pressure being put on the client, their partner, family members or other third parties.
- the proposed additional payment is sought because a provider's invoice has been refused by Legal Aid Services
- the proposed additional payment would compensate the provider for services which Legal Aid Services has already refused on an amendment to grant, or for services which are specifically excluded from the relevant fixed fee schedule(s)

If a payment is proposed by the legally aided person and/or their partner then their financial eligibility will need to be reassessed.

A payment may be authorised from other recognised sources such as in Waitangi proceedings provided it is not for the same activity as that funded through a legal aid grant.

The receipt of a user charge (see below) from a client is not an authorised payment under s 105.

If, however, the client has paid the user charge and the Commissioner has not deducted the charge from an eligible invoice, the provider cannot retain the amount of the user charge received from the client. For example, where the provider does not claim for services, or claims for services that are not approved for payment, the provider must return the user charge to the client or forward it to a provider who was reassigned the case.

As the user charge is paid directly by the client to the provider, the client should seek reimbursement from the provider where such a user charge has been paid, but no service has been provided.

## User charges for family and civil

The user charge is only payable if the grant was approved from 2 September 2013 to 31 December 2022.

For grants approved from 2 September 2013 to 31 December 2022, a user charge of \$43.48 (GST exclusive) applies to full and interim civil and family legal aid matters, unless it is a specified application. The user charge does not apply to legal aid applications that are declined as it is payable only on approved grants.

Section 18A of the Legal Services Act 2011 requires aided persons to pay the user charge directly to the lead provider assigned to their case as a condition of the grant. Responsibility for collecting the user charge from the aided person rests with the lead provider.

# Claims

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## Legal aid grants

THE KEY SECTIONS OF THE ACT ARE:

- section 97: Lead provider to claim for payment
- section 98: Time frame for claiming for payment
- section 99: Secretary to refer claim to Commissioner for decision
- section 100: Secretary must pay approved claims.

THE KEY REGULATIONS TO THE ACT ARE:

- regulation 19: Claiming for payment for legal aid services.

### Claim requirements

The invoice (claim) must:

- be on the prescribed form:
  - form 4 is used for other Criminal pre-fixed fee and non-fixed fee (e.g. HCC) claims
  - form 10 is used for Family pre-fixed fee and non-fixed fee claims
  - form 16 is used for Waitangi Tribunal claims
  - form 20 is used for civil non-fixed fee claims
  - forms 23 – 27 are used for Criminal fixed fee and fixed fee plus claims
  - forms 30 – 35 and 40 – 41 are used for Family fixed fee and fixed fee plus claims
  - form 38 is used for ACC fixed fee claims
  - form 42 is used for Victims Orders Against Violent Offenders fixed fee and fixed fee plus claims
  - form 44 is used for Employment Relations Authority fixed fee and fixed fee plus claims
  - form 46 is used for Public Safety (Public Protection Orders) fixed fee and fixed fee plus claims
  - form 48 is used for Children’s Workers exemption appeals fixed fee claims
- must be submitted within the required timeframe (refer below)
- include a GST number - if a provider is non-GST registered then the claim must be for a GST exclusive amount
- include the correct forum category, lead/listed provider number, guideline hourly rate (where applicable) and GST exclusive amounts
- specify start and end date for the covering period, or for fixed fee cases the date the fixed fee activities are completed
- include actual and reasonable general office disbursements (this cannot be claimed if already included in the fixed fee under the proceeding steps or fixed fee schedules)

- include receipts (where applicable) particularly for special disbursements which must have details of the supplier, date and description of service as well as type and amount of the disbursement claimed
- include details of the non-lawyer (where applicable) preventing duplication or overcharge and indicating their:
  - full name and title
  - guideline hourly rate
  - details of the work undertaken including activities in the proceeding steps or fixed fee schedules (payment for non-lawyers for proceedings covered by fixed fees will only be available where an amendment to grant has been approved for non-lawyer attendances)
  - number of hours taken to complete the work (note the lead provider must deduct these hours from the balance of hours available).
- be split for work completed by non-lawyers:
  - pre 1 July 2011 and claimed as a fee
  - post 1 July 2011 and claimed as a special disbursement
- include reasons for any attendances delegated to an agent
- indicate whether the invoice is interim and include details of work completed (not required for fixed fee cases) and status of the proceedings to date
- indicate whether the invoice is final and include a copy of the final agreement (if the sealed orders are not available a report on the outcome is required)
- include correct GST calculations and total claim amounts
- be fully completed and signed by the assigned lead provider (incomplete forms will be returned)

Forms are available in a Word template or PDF formats. Some forms can be ordered in hardcopy.

The invoice forms are aligned with the different fixed fee schedules and set out the relevant fixed fees able to be claimed on a case falling within that schedule. Providers must use the invoice form which aligns with the schedule applicable to the grant.

In completing the appropriate fixed fee or fixed fee plus invoice form, providers must confirm that:

- the claim is based on the tasks undertaken for the relevant activity/activities and disbursements actually and reasonably incurred
- no other payment, remuneration or benefit has been or will be received in respect of the work (unless authorised by Legal Aid Services), and
- any non-lawyer or supervised provider performed his or her work under their supervision and they are responsible for it.
- any claim on an hourly basis, is made at the rate of the provider who performed the work
- they have informed Legal Aid of all charges they are aware the client is facing and there are no activities they are seeking payment for that are the subject of another invoice, unless an amendment to grant for additional work has been approved.

Providers must retain sufficient documentary evidence and records to be able to support each claim in the event of an examination and/or audit. Under the Act and as part of the Ministry's assurance

programs, evidence and records may be requested for the purpose of ensuring the work completed was actual and reasonable and the provider has fulfilled their legislative, contractual and professional obligations.

Any claim for payment for a fixed fee case submitted on a criminal legal aid invoice form (Form 4) will be returned to the provider for resubmission in the prescribed manner. To ensure that the prescribed form is received within the required time frame, providers will need to bear in mind the six-month period for invoicing after delivery of services that applies to complex cases.

## Time frame for claiming payment

**Note:** This section relates to payment for legal aid services only. The Regulations do not specify a time frame for invoicing for specified legal services (Duty Lawyer and Police Detention Legal Assistance invoices).

### The timeframe for invoicing

Regular invoicing by providers assists the Commissioner with managing legal aid expenditure against forecast and individual grants of aid, as well as ensuring that clients are kept up to date with their costs of service. If not already in place, providers are encouraged to implement robust business practices to ensure a regular and reliable invoicing cycle. In most cases providers would not be expected to invoice more than once per month.

Section 99 of the Legal Services Act 2011 (the Act) provides that the Commissioner may reject any invoice that is not submitted in accordance with the time frame set by the Legal Services Regulations (Regulations).

For all legal aid invoices including work billed as disbursements, and work undertaken prior to aid being granted, the time frame set by Regulations is six months from the day after the services are provided, or from the day after services are completed in the case of fixed fee arrangements.

The six-month timeframe applies unless an alternative time frame for invoicing has been specified by the Commissioner for an individual matter.

The Regulations state that a claim for payment for legal aid services must be made for each day the service is provided, however, legal aid will require this from a provider only where it is unclear whether an invoice has been submitted within the applicable time frame. If necessary, the Commissioner will request a breakdown in writing of services by date, proceeding steps, activity, hours and fees.

A claim for payment is deemed to be made when the invoice is received by Legal Aid Services.

### Submitting a late invoice

If a provider considers that there are circumstances that warrant acceptance of a late invoice, the onus is on the provider to tell the Commissioner what these circumstances are.

### Purpose of discretion to approve late invoices

Invoices are to be submitted within six months of the relevant service date. However, where approval of an occasional late invoice does not prejudice this goal or other interests of the Commissioner's, a late invoice may be accepted.

## Factors to consider

When deciding to accept or reject a late invoice, the following factors should be considered:

- the length of the delay
- the reasons for the delay
  - the number of times the provider has previously submitted invoices outside 6 months
  - the value of the invoice
  - whether the Commissioner is prejudiced by the delay in relation to the present invoice (e.g. the aided person has already been advised of their final repayment amount).

Guidance about these factors is provided below. It is general and does not cover every scenario. Each request to accept a late invoice will be considered on its merit in light of the discretion purpose statement above.

### LENGTH OF THE DELAY

The length of the delay is considered in relation to the six-month invoicing period. While it is not desirable to set a timeframe that would be acceptable, in addition to the six months, a number of days past the due date may be considered trivial, while a month or more is a substantial delay. However, even a substantial delay may not adversely affect the Commissioner's interests if the provider has no history of submitting late invoices and there is no prejudice to the Commissioner in a specific case.

### THE REASONS FOR THE DELAY

Where circumstances that were out of the ordinary intervened to prevent the provider submitting their invoice on time, the invoice may be accepted. However, where there is no special circumstance, but also no prejudice to the Commissioner, an invoice may be accepted.

Following are some examples of scenarios that for this purpose may be considered special circumstances, and some that are not special circumstances.

Scenarios that have been held by the Legal Aid Tribunal not to be special circumstances that would excuse a provider's delay in relation to similar provisions in the Legal Services Act (the Act) include:

- delay caused by issues arising from management of the firm's workload
- departure of staff solicitors and a need to re-prioritise the firm's workload
- closure of a provider's firm over the holiday period
- a combination of workload pressures such as the provider being overseas for part of the period, illness of another barrister (adding to the provider's workload) and attending to numerous other cases for clients, as well as administrative matters.

Scenarios that have been held by the Legal Aid Tribunal to be special circumstances that would excuse a provider's delay in relation to similar provisions in the Act include:

- conduct of the other party in the dispute that delayed the provider in submitting their invoice
- a decision or advice of the Commissioner that significantly contributed to the delay.

### THE NUMBER OF TIMES THE PROVIDER HAS PREVIOUSLY SUBMITTED INVOICES OUTSIDE SIX MONTHS

Where a provider has had late invoices approved once or more in the previous 12 months without the existence of special circumstances, there is a strong argument for rejecting the invoice. Grants officers can identify previously approved late invoices by running a report.

## THE VALUE OF THE INVOICE

Rejecting late invoices may protect the six-month invoicing timeframe or the Commissioner's interests in a specific case, but it also deprives the provider of their compensation. Therefore, there should be strong reasons for rejecting an invoice, especially if it is for a large amount. The same consideration will be applied to disbursement amounts that may affect a third party.

## WHETHER THE COMMISSIONER IS PREJUDICED BY THE DELAY IN RELATION TO THE PRESENT INVOICE

The Commissioner may be prejudiced, where for example, the aided person has already been advised of their final repayment amount and any further amount will not be recoverable. Another scenario may be where the invoice is so late that the Commissioner will have difficulty in properly assessing it.

## Delegated authority

If an invoice is received that claims payment for services or disbursements that are outside the six-month timeframe, the Commissioner may decline or approve it. The invoice will be referred to the team manager for a decision. The grants officer will provide their written recommendation to the team manager. The team manager will review the recommendation and record on it their decision to decline or approve the invoice (or part of it).

## Completion of services

If:	Then the date the services are completed is:
Aid has been withdrawn	The date on which aid is withdrawn, as set out in Legal Aid's letter
The assignment has been terminated	The date on which the assignment is terminated, as set out in Legal Aid's letter
The case has not been disposed of before the tribunal or court for another reason (e.g., the client has failed to provide updated instructions or the charge has been withdrawn, or the client did not appear and a warrant has been issued))	The date on which instructions to provide legal aid services ceased. Where this date is unknown: <ol style="list-style-type: none"><li>1. (in family/civil), it may be assumed to be a maximum of 9 months after the last activity date</li><li>2. in criminal, one month after the missed court appearance.</li></ol>

## Family and ACC cases

It is recognised that ACC cases can take some time to reach resolution. Accordingly, providers may submit a claim for payment at any stage during the proceedings as long as it is for a completed activity.

Time frames for claiming payment for legal aid services are set out in section 98 of the Legal Services Act 2011 and regulation 19 of the Legal Services Regulations 2011.

- where there is a fixed fee arrangement the time frame for receiving an invoice is six months after the date on which the services were completed
- for all other services, the time frame for receiving an invoice is six months from the date that the services are provided.

## All law types

For a fixed fee case, the relevant date from which the six-month time frame begins is when all fixed fee services within the applicable schedule are completed. Pre-approved disbursements must also be claimed within this time frame.

Where fees outside of the fixed fee schedule have been approved on an hourly rate basis (i.e. a Fixed Fee Plus or complex case), an invoice for those fees must be received within six months of the day on which the service was provided. An invoice for disbursements that required prior approval must be received within six months of the disbursement being incurred.

For cases that comprise of a mixture of fixed fees and payment on an hourly rate basis, a claim for payment for the fixed fee component must be received within six months of completion of all fixed fee services within the applicable schedule.

The following table provides a summary of the different fee and disbursement types which can be claimed and the time frames for claiming payment in accordance with regulation 19. A Fixed Fee Plus case may comprise all four payment types set out below, so providers will need to be aware of the different time frames for invoicing the different payment types.

### Invoicing time frames

Fee/disbursement type	Service type under regulation 19	Invoicing time frame	Invoice forms on which to claim payment
Fixed fee	Fixed fee arrangement	Six months from completion of all services in the applicable fixed fee schedule	Invoice form 38, 42, 44, 46 and 48 Invoice forms 23D, 24D, 25B, 26A and 27A Invoice forms 30 – 35, 40 and 41 (depending on which fixed fee schedule applies)
Pre-approved disbursement	Fixed fee arrangement	Six months from completion of all services in the applicable fixed fee schedule	Invoice form 38, 42, 44, 46 and 48 Invoice forms 23D, 24D, 25B, 26A and 27A Invoice forms 30 – 35, 40 and 41
Disbursement requiring prior approval	All other legal aid services	Six months from date disbursement incurred	Invoice form 38, 42, 44, 46 and 48 Invoice forms 23D, 24D, 25B, 26A and 27A Invoice forms 30 – 35, 40 and 41 Invoice form 4 Invoice form 10 Invoice form 20 Invoice form 16
Fee on an hourly basis	All other legal aid services	Six months from date each service provided	Invoice form 38, 42, 44, 46 and 48

			<p>Invoice forms 23D, 24D, 25B, 26A and 27A</p> <p>Invoice forms 30 – 35, 40 and 41</p> <p>Invoice form 4</p> <p>Invoice form 10</p> <p>Invoice form 20</p> <p>Invoice form 16</p>
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### Invoicing where the grant has been reassigned - Criminal

**Note:** Legal Aid expects that the provider whose assignment is terminated will supply the case file to the new provider after the case is reassigned and encourages providers to have a verbal discussion of progress on the case to date to facilitate handover.

A reassigned grant will retain its status as a fixed fee or fixed fee plus case regardless of the reassignment. For fixed fee cases, the following payment principles apply:

#### POLICE PROSECUTION PROCEEDINGS, HIGH COURT APPEALS AND PAROLE CASES (SCHEDULES A–C, G AND J)

##### *Termination of assignment*

For a Police prosecution case, the Preliminary work fee may be payable to the provider whose assignment is terminated (the first provider). For High Court appeals and parole cases, the Termination of Assignment fee may be claimed.

The fee is payable when a significant amount of work has been undertaken in good faith, even if the stage/fee has not been completed, for reasons outside of the provider’s control. As a minimum requirement, we expect the provider to have sought disclosure and reviewed it (if it was supplied) and contacted or attempted to contact the client prior to the case being reassigned.

Some scenarios where a reassignment may become necessary prior to a plea being entered include:

- a change of court
- a conflict of interest becomes apparent following the receipt and examination of disclosure material
- charges are upgraded prior to a plea being entered, thereby requiring a provider with the appropriate listing and/or a preferred provider to be assigned.

Where an assignment is terminated, the first provider may claim any applicable fixed fees, as contained in the relevant schedule.

The provider to whom the case is reassigned (the second provider) may claim any applicable fixed fee upon case disposal.

#### CROWN PROSECUTION PROCEEDINGS, COURT OF APPEAL AND SUPREME COURT APPEALS (SCHEDULES D-F, H- I) AND APPLICATIONS TO THE CRIMINAL CASES REVIEW COMMISSION

The first provider may claim the appropriate fixed fees for activities completed prior to termination of assignment. Where a Crown prosecution case is reassigned prior to all the tasks associated with a



fee having been completed, the fee may be payable when a significant amount of work has been undertaken in good faith, even if the stage/fee has not been completed, for reasons outside of the provider's control.

The second provider may claim fees for the activities that have not been completed prior to reassignment.

### **Invoicing where the grant covers more than one criminal charge**

Fixed fees are set per legal aid grant and not per charge, so having multiple charges on a grant does not enable a provider to charge multiple fees for the same activity. Where there are multiple charges on a grant, the charge with the most serious penalty will determine the schedule of fees that applies for the case. However, the 'preliminary work' activity includes a second reduced fee for when additional charges are added to the legal aid grant.

Each time a new charge is added to a legal aid grant (or multiple charges are added to the grant at the same time), a reduced 'preliminary work' fee can be claimed to recognise the additional work required. However, if all the charges are treated together from that point, then no additional fees are required.

A new grant schedule will be sent to the provider when a new charge is added if the new charge is associated with a higher fixed fee schedule (i.e. if the new charge increases the maximum penalty).

Where the addition of a further charge to the grant results in a higher fee schedule applying to the case, all work not invoiced at the time of the fee schedule change will be paid from the higher fee schedule.

#### *Example:*

*In a case that moves from schedule A to B as a consequence of an added charge, and on which a schedule A Preliminary work fee has already been claimed, the schedule B Preliminary work fee cannot be claimed. If no Preliminary work fee had been claimed prior to the change in fee schedule, all fees for the case will be paid from the schedule B schedule.*

### **CLAIMING ONE FEE FOR THE SAME ACTIVITY ACROSS SEPARATE GRANTS**

Where a customer has more than one grant of legal aid and an activity is completed that deals with the charges on more than one of the customer's grants, one applicable fee for each relevant activity may be claimed. For example, where separate grant matters are sentenced at the same hearing, generally only one claim can be made for the sentencing activity and hearing time. Similarly, there may be other activities (e.g. bail applications) where one activity is completed for separate grants. However, claims on separate grants for the same activity may be justified where additional work is required.

### **WHERE CHARGES COVERED BY A SINGLE GRANT SEPARATE**

Under the 2017 and 2018 fee schedules A to F, if there are multiple charges on a grant (either from the outset of the grant or if new charges are added to the grant) that share one or more appearances and then separate with respect to their substance and how they are treated by the court, then where additional work is required to be undertaken, repeats of fees can be claimed for each relevant activity and/or activities required.

Where additional repeats of fixed fees are approved, this does not mean all fixed fees can be claimed unlimited times, rather it increases the maximum grant for that particular activity and/or activities by a specific amount based on the additional work required to be undertaken due to charges separating.

Requests for additional repeats of fixed fees are deemed to be an amendment to grant in terms of s 28 of the Legal Services Act 2011. Requests must be made in writing, although there is no specific form, and any time before the final disposition of the matter to which the application relates.

### **Police prosecution proceedings, High Court appeals and parole matters (schedules A–C, G and J)**

It is expected that for most of these cases one invoice will be submitted to Legal Aid at the conclusion of the case. However, a provider may submit an invoice for a particular fee at the completion of each stage. An interim fee can be claimed for schedules G and J if the case has been substantially progressed.

#### *Examples*

*Where legal aid is withdrawn in a Police prosecution case, the Preliminary work fee may be claimed if disclosure has occurred. The fees are payable when a significant amount of work has been undertaken in good faith, even if the stage/fee has not been completed, for reasons outside of the provider's control.*

*Where legal aid is withdrawn on a High Court appeal or parole matter, an interim fee may be claimed if the case has been substantially progressed.*

As a minimum requirement, we expect the provider to have sought disclosure and reviewed it (if it was supplied) and contacted or attempted to contact the client. Where a provider can demonstrate that he or she progressed the case by taking these actions but the client failed to appear to enter a plea or the charges were withdrawn before a plea was entered, a fee may be claimed.

For Police prosecution cases, the fixed fee for Trial can be claimed if evidence is presented at the hearing. Where a matter reaches a Judge-alone trial and a guilty plea is entered prior to evidence being presented, the provider can claim the base fee only for Administration/Case Review.

However, if the provider can demonstrate that he or she has in good faith prepared for a Judge-alone trial, which does not occur for reasons outside his or her control, the base fee for Trial can be claimed. Where the charge(s) are withdrawn immediately before the Judge-alone trial or before evidence is given, this is considered to be outside of the provider's control.

### **Crown prosecution proceedings, Court of Appeal and Supreme Court appeals (schedules D–F, H and I)**

An interim invoice for completed activities within these schedules may be considered at any stage in the proceedings.

Where legal aid is withdrawn in a Crown prosecution case, Court of Appeal or Supreme Court appeal, providers may claim fees for activities completed as at the date aid is withdrawn.

Where aid is withdrawn on a Crown prosecution case or charges are withdrawn prior to all the tasks associated with a base fee having been completed, the fee may be payable when a significant

amount of work has been undertaken in good faith, even if the stage/fee has not been completed, for reasons outside of the provider's control.

### **Invoicing for Case Management Memorandum (CMM) and Case Review Hearing**

Under the 2017 and 2018 fixed fee schedules, the fee for on time filing of the Case Management Memorandum (CMM) has been removed. A fee is available for preparation and completion of the CMM and preparation for a Case Review Hearing.

Evidence of having filed the CMM is not required. The onus is on the provider to file the CMM within the required time frame.

Any concerns about providers who consistently fail to file their CMM's on time or at all can be addressed by lodging a complaint and emailing [legalaidthcomplaints@justice.govt.nz](mailto:legalaidthcomplaints@justice.govt.nz).

### **Invoicing where the grant has been reassigned – Family and Civil**

When a reassignment has been approved by Legal Aid, the provider whose assignment is terminated may claim for those activities that are completed up to the point of reassignment. The case is handed over to the new provider so that the latter has access to all essential information and documentation to minimise any duplication of work. This should take place within 10 working days to ensure continuity in the court process.

It is possible for the provider whose assignment is terminated to have partially completed an activity at the point of reassignment. In this case, a claim for the applicable fixed fee/s will be considered

The new provider may invoice for activities completed from the point of reassignment.

However, for ACC cases, it is also possible that the new provider is required to undertake work in relation to an activity already carried out by the previous provider. In this case, a claim for the applicable fixed fee/s will be considered

For family cases, if a provider receives a reassigned case and fees for activities have been claimed, the new provider is eligible for a fee for those activities as usual. The full schedule, assuming the work needs to be done, is available to the new provider.

Where multiple reassignments occur within a case, the same rules apply for each occurrence.

### **Invoicing where aid is withdrawn – Family and Civil**

Providers may claim the full fixed fee for the applicable activities that are completed or partially completed at the date on which legal aid is withdrawn

## **Examinations under sections 90 and 99**

THE KEY SECTIONS OF THE ACT ARE:

- section 90: Aided person may request examination of cost of services
- section 91: Secretary may audit providers
- section 99: Secretary to refer claim to Commissioner for decision.

A claim may be investigated by the Commissioner under section 90 of the Act to determine whether it is excessive or inaccurate. This applies to situations where the provider has claimed for more time than was actually spent or has claimed for disbursements that were not used. Such a request must

be made within 20 days of notice of the cost of services. The claim or part thereof will be deferred to enable the examination to take place. Any legally privileged information disclosed will remain confidential.

The auditor will confirm in writing:

- the section of the Act under which the request was made
- the name of the examiner
- the nature of the issue to be examined
- a copy of the letter from the aided person outlining their concerns
- how the examiner will conduct the examination
- specific details about the information required from the provider
- a request for a formal response from the provider to the issues raised by the aided person
- that a copy of the Authority to Examine is available on request.

If the invoice is found to be excessive or inaccurate the Commissioner may decline to pay under section 99 of the Act.

## Claims - specified legal services

Claims for the duty lawyer service and the Police Detention Legal Assistance (PDLA) scheme are managed by Legal Aid Services. More information can be found in the duty lawyer or the PDLA operational policies [here](#).

# High cost cases (criminal)

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The most serious criminal cases are not suited to management under fixed fees. To ensure that the sometimes substantial amount of legal aid required for such cases is used effectively and efficiently, separate policies and procedures have been developed for cases identified as high cost criminal cases. Such cases will be managed from the initial grant on the basis of hours requested and approved by experienced grants officers.

The policies described below apply to specific aspects of the management of high cost criminal cases. Other legal aid grants policies in this manual apply in all other respects.

## Inclusion criteria

Grants may be categorised as high cost either from the outset, or after a grant of aid has been approved. Once categorised as high cost, the grant will remain a high cost case until it has been concluded.

Grants will automatically be managed as a high cost case if the case relates to one of the following matters:

- i. homicide offences (including charges of Infanticide) – s158-181 Crimes Act 1961 or any re-trial of such offences
- ii. serious fraud offences – being all cases involving prosecution by the Serious Fraud Office or Financial Markets Authority, or any re-trial of such offences
- iii. sexual violation cases where three or more complainants allege a sexual violation offence against the aided person or any re-trial of such offences.

## Discretionary inclusion

In addition to matters that are automatically categorised as high cost, there may be occasions where, based on the individual facts of a case, it may be granted as a high cost case.

A fixed fee or fixed-fee-plus grant may also be amended to a high cost case if subsequent to the grant of aid it is clear the case would be better managed as a high cost case.

When an existing grant is categorised as a high cost case after aid is granted, an invoice must be submitted for all work done prior to the date the case became a high cost case. All subsequent work must be invoiced against funding approved for the high cost case.

## Initial grant

Once categorised as a high cost case, all legal aid funding will be approved on a staged basis for specific activities or attendances.

Except for appeal matters, a standard initial grant of 40 hours preparation time (in addition to any bail grant) will be approved when legal aid is granted for a high cost case. This applies if the case is a high cost case when aid is granted and may apply if it becomes a high cost case after aid is granted.

After the initial grant has been used, the next funding request must show the specific activities or attendances the initial grant was used for.

In addition to the initial grant of 40 hours preparation time, hours will be granted for bail activities and call-overs subsequent to the trial call-over. These hours are repeatable – they may be claimed per occurrence of the activity without requesting an amendment to grant. However, an amendment to grant must be requested if the number of hours requested for a specific occurrence of an activity exceeds the hours granted.

Funding requests are made by submitting a criminal amendment to grant form. This form enables counsel to describe funding sought for specific activities/attendances and to highlight the need for funding for specific expert reports/witnesses or other disbursements.

If full and complete information is provided, an accompanying covering letter is not necessary when submitting amendment to grant requests.

## Funding requested in advance

All costs associated with the grant of legal aid (including expert witness and/or additional counsel costs) must be sought in advance of engagement, with full justification/explanation as to the need for such funding.

While Legal Aid Services (LAS) accepts that there may be unexpected or unforeseen events which require the immediate/undivided attention of counsel, such instances are limited. Retrospective funding requests will not be accepted unless reasons for the delay are satisfactorily outlined. Administrative delays/oversight will not satisfy this requirement as LAS' expectation that all approvals will be sought in advance of work being undertaken is explicit.

When submitting retrospective applications, counsel will be required to provide the following information alongside any other relevant details:

- i. why such funding was not able to be sought in advance of work being undertaken or the unforeseen event necessitating work by counsel outside of the funding already approved
- ii. confirmation as to whether funding for this activity/disbursement has already been approved in part.

Additional information may be required of counsel, on a case-by-case basis.

### Hearing time is pre-approved

Hearing and waiting time will be available at the provider's hourly rate. Prior approval is not required for hearing/waiting time. Time should be claimed based on the actual time spent by the provider in a hearing or waiting. Policy on waiting time appears elsewhere in this manual.

## Invoicing

Invoices must be presented in line with the six-month invoice period applying to all grants of legal aid.

## Funding guidelines

The guiding principle for assessing funding requests is whether the interests of justice require the funding to be approved (see Legal Services Act s 8(1)(c)(ii)). However, the decision on the amount to approve is the Commissioner's and not the providers. This is consistent with the purpose of delivering legal services in an effective and efficient manner made clear in s 3(b) of the Legal Services Act 2011.

The High Court has said that the Commissioner assesses a reasonable fee for the work to be done:

*It is no longer a system based on the actual time and fees of counsel. Rather, it is a system where judgment is exercised by the administering body as to the appropriate fee for the work done or to be done. The difficulty arising from practitioners being able to dictate time and fees has been replaced by the difficulty of the [Commissioner] having to make [his/her] own principled assessment of the appropriate fee for the work to be done. Legal Services Agency v Haslam (2007) 18 PRNZ 469 at [65] & [67].*

In reviewing disclosure for example, while a provider has an obligation to be aware of the nature of the contents of materials, that does not mean that every line of every document disclosed in bulk should be read on the off chance that it might contain information that helps or hinders.

This applies as much to an instructed expert's work as it does to the lawyer's own work. The fact that an expert, or a lawyer may have worked the time sought, does not mean aid must be granted. The Commissioner is required to assess a reasonable fee and is not bound to approve funding requests in full.

To enable an assessment of a reasonable fee, funding requests must explain why the requested hours or disbursement(s) are necessary. A task breakdown and how the tasks will contribute to the defence case are essential.

Where the hours, or amounts sought for disbursements, are regarded as excessive, reasons will be given for declining any funding request.

Decisions as to the amount of funding approved in a specific case may be referred to a Solicitor if deemed necessary.

## Expert witnesses and reports

In assessing a request to fund an expert, the Commissioner is required to assess its relevance and contribution to the defence, in advancing any defence or countering the Crown case. This assessment requires consideration of:

- i. the nature of the Crown case
- ii. the nature of the proposed defence
- iii. the relevance of the proposed expert evidence to the defence
- iv. why the expert is needed and how they will contribute to the defence case.

Any funding request for an expert should include this information.

Where the engagement of an overseas expert is proposed, reasons must be provided why a NZ/Australia expert cannot be used. Similarly, where the engagement of an expert from outside the area in which the case is being held is requested, reasons must be provided why a local expert cannot be used.

## Specialist reports

We recognise that the provider may need to engage specialist third party service providers to prepare reports on specific matters related to the conduct of the case.

The disbursements policies elsewhere in this manual list report types and whether they require prior approval. Forensic reports in criminal cases require prior approval via an application for amendment to grant before obtaining a specialist report.

The application for amendment to grant must demonstrate why the report is needed and how it will contribute to a successful outcome for the customer.

In criminal cases, to assist the Commissioner in assessing any report's relevance and contribution to the defence, in advancing any defence or countering the Crown case, the provider must include information on:

- i. the nature of the Crown case
- ii. the nature of the proposed defence
- iii. the relevance of the proposed expert evidence to the defence
- iv. why the expert is needed and how they will contribute to the defence case.

Where the engagement of an overseas report writer/expert is proposed, reasons must be provided why a NZ/Australia expert cannot be used. Similarly, where the engagement of an expert from outside the area in which the case is being held is requested, reasons must be provided why a local expert cannot be used.



## Second counsel

Junior or co-counsel may be appointed on request if the complexity of the proceedings warrants it.

The appointment of **co-counsel** may be considered for lengthy cases where a trial is expected to run for more than a month or where the charges, issues of law and evidence are large and complex, and the Crown is represented by two or more senior counsel. If approved second counsel is expected to continue with the trial if for any reason the lead counsel is unable to complete the trial. This means that co-counsel must have the equivalent listing category or higher.

**Junior counsel** may be appointed where there is a substantial volume of disclosure. Such counsel can be of a lower listing approval category than the lead provider and will be remunerated up to their own listing approval category (not the proceedings category of the case).

The appointment may be considered for cases where the charges, issues of law or evidence are large and complex and there is a substantial volume of documentary evidence. The Crown must also be represented by at least two counsel.

# Disbursements

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**T**his disbursements policy section covers all legal aid cases.

The **civil** disbursements policy dated 1 March 2015 was replaced on 1 July 2015 to include disbursements to support the new Children’s Workers exemption appeals fixed fees for proceedings under Part 3 of the Children’s Act 2014.

The **family** disbursements were replaced for family justice reforms cases which came into force on 31 March 2014.

For **criminal** cases, this document updates the disbursements policy that was introduced on 5 November 2012, and covers Criminal legal aid cases including fixed fee, non-fixed fee, fixed fee plus and high cost cases.

For **Waitangi** cases, this document applies to all new cases from 31 March 2014. Existing cases will be able to claim under this revised disbursement policy from their next invoice after 31 March 2014, even if some or all of the work relevant to that invoice has been carried out prior to this date.

In exceptional circumstances, we may consider paying disbursements not listed in this policy, or amounts exceeding the indicated maximum. In these instances, the provider will need to submit an application for amendment to grant.

## Disbursements included in the fixed fee

### Agents’ fees

The provider may find it necessary to engage a suitably qualified provider to act as an agent (non-Public Defence Service) on their behalf.

Under the fixed fees framework, agents’ fees are included in the fixed fee amount and may not be claimed as a separate disbursement.

### Non-lawyer

Non-lawyers are qualified legal executives, non-qualified legal executives, paralegals and law clerks, (who may be practising lawyers but not approved by the Secretary or contracted to provide legal services). The provider assignment policy in [the grants manual](#) specifies the work that can be delegated to a non-lawyer.

Non-lawyers’ costs are deemed to be included in the fixed fee amount and may not be claimed as a separate disbursement.

### Office disbursement

Individual components of office disbursement are:

- photocopying, printing and binding
- cell phone and toll calls
- postage, courier and fax.

# Types of disbursements

## Pre-approved disbursements

Pre-approved disbursements are generally those costs that are approved as part of the grant of aid. They are treated in this way because they are costs that are normally expected to be incurred over the course of particular proceedings.

As with all disbursements, they must be directly related to the case and:

- cover the cost of services provided by third parties or
- involve specific expenditure directly attributed to the conduct of a case.

## Disbursements requiring prior approval

Disbursements requiring prior approval are generally those that are high cost and/or are not normally expected to be incurred over the course of particular proceedings.

The provider must submit an application for amendment to grant for disbursements which require prior approval. If a provider incurs a disbursement requiring prior approval without first obtaining approval, they may not be reimbursed.

We will only approve disbursements requiring prior approval that are applicable to the law type of the case, and reasonable in the circumstances of the case.

Applications must detail the disbursements, for which approval is sought, the reason for incurring them, and the estimated cost. The provider will need to submit an application for amendment to grant on the appropriate legal aid form available [here](#).

### Civil/Family:

- Form 52

### Criminal:

- Form 51

Under the Legal Aid Services policy Granting aid for Waitangi Tribunal Matters<sup>1</sup>, the provider will need to submit amendment applications covering all reasonably anticipated work for each three-month period in advance. This includes all disbursements requiring prior approval.

### Waitangi Tribunal:

- Form 15 – Waitangi Tribunal proceedings

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<sup>1</sup> Implemented 30 September 2012

# Claiming for disbursements

The provider is required to pay for all disbursements relating to a case and may claim reimbursement of some of those costs from us<sup>2</sup>. Disbursements are claimed by the lead provider assigned to the case.

We will only approve payment for disbursements where:

- the disbursement is on the list of pre-approved disbursements, or prior approval has been granted
- the disbursement has actually been incurred
- the disbursement amount is reasonable in the circumstances of the case, for example, the amount is comparable with similar disbursements in similar cases
- the amount of the disbursement is within the maximum grant established for that case.

The claim must be made in the prescribed manner, and:

- include details of the supplier, date and description of service, type and amount
- show the cost as GST exclusive (note: all rates in this document are GST exclusive)
- be supported by GST receipts unless stated otherwise in this policy.

Where GST receipts or other supporting documents are not required, the lead provider must nevertheless retain sufficient documentary evidence and records to be able to support each claim in the event of an examination and/or audit. Disbursements must be claimed on the appropriate legal aid tax invoice form for each law type. The following tax invoice forms are required for each law type.

## **Civil:**

- Form 20 – Civil non-fixed fee cases
- Form 38 – ACC
- Form 42 – VOaVO
- Form 44 – Employment
- Form 46 – PPOs
- Form 48 – Children’s Workers exemption appeals

## **Criminal:**

- Form 4 – Criminal non-fixed fee cases
- Form 23 – Fixed Fees Schedules A-C (Charges filed on or before 30 June 2013)
- Form 23A – Fixed Fees Schedules A-C (Charges filed after 1 July 2013 and applications received prior to 4 July 2016)
- Form 23B – Fixed Fees Schedules A-C (Applications received on or after 4 July 2016)
- Form 23C – Fixed Fees Schedules A-C (Applications received on or after 3 July 2017)
- Form 23D – Fixed Fees Schedules A-C (Applications received on or after 2 July 2018)
- Form 24 – Fixed Fees Schedules D-F (Charges filed on or before 30 June 2013)
- Form 24A – Fixed Fees Schedules A-C (Charges filed after 1 July 2013 and applications received prior to 4 July 2016)
- Form 24B – Fixed Fees Schedules D-F (Applications received on or after 4 July 2016)
- Form 24C – Fixed Fees Schedules D-F (Applications received on or after 3 July 2017)

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<sup>2</sup> See s106 of the Legal Services Act 2011.

- Form 24D – Fixed Fees Schedules D-F (Applications received on or after 2 July 2018)
- Form 25 – Fixed Fees Schedule G (Charges filed on or before 30 June 2013)
- Form 25A – Fixed Fees Schedule G (filed after 1 July 2013 and applications received prior to 2 July 2018)
- Form 25B – Fixed Fees Schedule G (Applications received on or after 2 July 2018)
- Form 26 – Fixed Fees Schedules H&I
- Form 26A – Fixed Fees Schedules H&I (Applications received on or after 2 July 2018)
- Form 27 – Fixed Fees Schedule J
- Form 27A – Fixed Fees Schedule J (Applications received on or after 2 July 2018)

**Family:**

- Form 10 – Family non-fixed fee cases
- Form 30 – Adoption
- Form 31 – Oranga Tamariki
- Form 32A – Care of Children / Guardianship
- Form 33 – Family Violence (Applicant & Respondent)
- Form 34 – Maintenance/Child Support
- Form 35 – Relationship Property
- Form 40 - Paternity
- Form 41 – PPPR

**Waitangi Tribunal:**

- Form 16 – Waitangi Tribunal proceedings

# General disbursements

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This section identifies whether these disbursements are pre-approved or require prior approval and the rate at which they will be paid.

## ACC and employment casebooks

Casebooks are prepared for proceedings and hold relevant case law and they may be helpful when preparing for an **appeal**.

The amount of time that the provider spends researching a case is covered by the fixed fees/guideline hours as part of preparation.

- pre-approved for ACC and employment cases only
- reimbursement amount is \$75 per casebook (excl. GST) with a GST receipt to support the claim
- if actual costs associated with the printing casebooks are higher than those pre-approved, reimbursement can be claimed through prior approval via an amendment to grant for the **amount in excess of that pre-approved**.

## Birth certificate

A birth certificate may be required in some cases, for example to identify the parents in a paternity dispute or in adoption proceedings.

- pre-approved for civil cases (except ACC) and family cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Court filing fee

Legally aided persons may apply to have court fees waived or refunded. Where the application for refund or waiver has been declined, we will reimburse the fees as a disbursement.

Only the fees that are not covered by the fees waiver and refund provisions may be claimed. A list of court fees that may be waived and refunded is available on [our website](#).

- pre-approved for civil (excluding ACC), for family cases and for criminal applications for limited licenses (arising from a disqualification)
- this disbursement is not available for ACC cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Deed of Assignment

For legal aid purposes, this means a document that transfers to us a legally aided person's right to recover costs from the other party. Preparation of the Deed of Assignment is treated as a disbursement for administrative purposes.

- pre-approved for all civil and family cases
- the Deed of Assignment is required to support a claim for reimbursement
- reimbursement will be at \$66.00 (excl. GST), a GST receipt is not required to support the claim

## Document and process server

A document or process server delivers legal and court documents to an individual involved in a court case.

- pre-approved disbursement for civil (excluding ACC) cases
- not available for ACC cases
- reimbursement will be on an actual and reasonable basis, including for essential overseas service with a GST receipt to support the claim

## Drug testing

Drug testing may be carried out by a variety of methods including hair follicle testing and blood testing. Mobile breath testing devices (e.g. SmartStart) may also be used for alcohol testing in family cases.

The provider must be able to demonstrate why the drug test/device is required and how it will contribute to a successful outcome for their client. This disbursement covers both the drug test and the report.

- not available for ACC or VOaVO cases
- pre-approved for employment, PPO and Children's Workers exemption appeals fixed fee cases
- requires prior approval via an application for amendment to grant for all other cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Drug testing – Judge directed

Drug testing may be carried out by a variety of methods including hair follicle testing and blood testing. Mobile breath testing devices (e.g. SmartStart) may also be used for alcohol testing in family cases.

The provider must retain evidence on their file that the testing was directed by a Judge however this does not need to be provided when claiming the disbursement.

This disbursement covers both the drug test and the report. It is pre-approved for family cases. Reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim.

## DNA testing

DNA testing may be required to determine paternity of a child or children. Half the cost is pre-approved to cover the cost of the legally aided person and half the cost of the child.

There will be times when funding is required to cover the other party's share of the DNA testing or there are more than three people being tested. For example, the children are twins or there are multiple children. We will pay the total cost of DNA testing where:

- the other party refuses to pay the cost of testing, however agrees to testing taking place or
- the other party cannot afford to pay for the cost of testing.

Notes:

- the cost of DNA testing is pre-approved for the legally aided person in family cases only
- the cost of DNA testing for the other party's share, or the testing of more than three people requires prior approval via an application for amendment to grant for family cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Employment Relations Authority

Employment fixed fee cases may be reimbursed for Employment Relations Authority application filing fees as disbursements. Relevant fees can be found in Schedule 2 of the Employment Relations Authority Regulations 2000.

## Expert Consultancy Service

The following pre-approved referral disbursements are available for use of an Expert Consultancy Service to locate a suitable expert for a legal aid case:

- a. **\$250** - NZ based expert(s)
- b. **\$500** - Only overseas experts available due to uncommonly used skills or expertise required

Scenarios not covered by the above two disbursements will be managed by amendment. For example, some complex cases may involve a large number of experts where expertise is largely only available overseas.

The above disbursements are pre-approved and may be applicable in criminal, family or civil cases. The disbursement covers the following activities undertaken by the Expert Consultancy Service:

- Read and consider the relevant documents submitted by the provider
- Identify, with precision, area(s) of expertise required based on the information provided
- Identify appropriately qualified/experienced expert(s) to provide the required assistance
- Make preliminary contact with the identified expert(s) to confirm their availability, willingness to accept instructions, and any relevant terms of professional engagement (including hourly rate)



- Complete standard response form to indicate which expert/s required, name and contact details for expert/s and return form to provider once disbursement paid.

The disbursement can be claimed on the relevant invoice form for the case.

#### DEFINITION OF AN EXPERT CONSULTANCY SERVICE

An Expert Consultancy Service is an individual or group of individuals (whether or not operating as a corporate entity) that provides the following services:

- To identify, with precision, the particular professional expertise required to address the issues that have been identified by the legal aid provider as requiring expert assistance.
- To identify an appropriately qualified and experienced expert, with that particular professional expertise, to provide the required expert assistance.
- To make preliminary contact with the identified expert to confirm that expert's availability and willingness to accept instructions, and any relevant terms of professional engagement (including hourly rate).

An Expert Consultancy Service must be able to demonstrate professional experience:

- as an expert witness within the field of particular professional expertise relevant to the case, or
- as an expert witness within a related field of professional expertise.

Whether a field of professional expertise is a "related field" will be a matter of assessment in each case. For example, an individual or group of individuals with professional experience as an expert witness addressing medical issues *may* provide an expert consultancy service for medical and forensic science issues but would be unlikely to be able to assist with, say, forensic accountancy issues.

A full CV (for individuals) or other supporting information is only required where the request is over \$5,000 to demonstrate they are qualified to provide such consultancy services.

## Interpreter and Translator

Interpreters are used where the legally aided person cannot communicate meaningfully with the provider due to language or hearing difficulties. Translators provide interpretation in a written form, for example translating affidavits.

The court pays for all interpretation and translation services delivered in court in all cases, where the use of an interpreter or translator is Judge-directed. For family cases, this court pays for it if it is **EITHER** Judge-directed **OR** relates to interpretation or translation services for Māori or New Zealand sign language.

We reimburse the fees:

- where an interpreter or translator are required for out-of-court assistance **OR**
- where these services are required in court but are not judge-directed
- for family cases, where these services are required in court but are not Judge-directed **AND** are for a language that is not Māori or New Zealand sign language.

Notes:

- interpreter's costs are a pre-approved disbursement for all civil and family cases at actual costs per hour up to a maximum of \$400, except for refugee and protected persons cases, which are pre-approved up to a maximum of \$1200 for interpreters/translators.
- interpreter's costs require prior approval via an application for amendment to grant for criminal (High Cost) cases
- where interpreters are utilised for out-of-court assistance in criminal (except High Cost) cases:
  - interpreter's costs are a pre-approved disbursement at actual costs per hour up to a maximum of \$400
- translator's costs are a pre-approved disbursement for all cases at actual costs per hour up to a maximum of \$200 except:
  - criminal High Cost cases, and
  - refugee and protected persons cases, which are pre-approved up to a maximum of \$1200 for interpreters/translators.
- reimbursement for costs of interpreters and translators which are **in excess of these pre-approved costs** require prior approval via an amendment to grant
- allowances and travelling expenses for interpreters and translators require prior approval via an application through amendment to grant for all cases
- reimbursement will be on an actual, necessary and reasonable basis with a GST receipt to support the claim

## Library

The provider may claim for reimbursement of fees incurred in the retrieval or acquisition of material on a particular topic by a third-party service provider. This includes local law libraries, as well as service providers such as Thompson Reuters and LexisNexis where someone else acquired or retrieved the information.

This disbursement does not include the cost of research. Research involves investigation, exploration, and analysis of information to create new information. This disbursement relates to the straightforward retrieval of existing information.

- pre-approved for all cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Non-lawyer

Non-lawyers are qualified legal executives, non-qualified legal executives, paralegals and law clerks.

We cannot approve or contract non-lawyers to provide legal services. The [provider assignment policy](#) clarifies the work that may be delegated to a non-lawyer as follows:

### THE LEAD PROVIDER MAY DELEGATE TO NON-LAWYERS:

- meeting with clients regarding legal aid matters for example assisting with legal aid forms
- legal research

- document drafting.

#### THE LEAD PROVIDER MAY NOT DELEGATE TO NON-LAWYERS:

- attendance at any hearings whether minor, merit or substantive
- taking instructions from clients
- giving legal advice.

The number of hours taken by a non-lawyer to complete a task is claimed as a disbursement. When a non-lawyer has undertaken work for a legal aid case, the provider must specify the following information on the appropriate invoice form:

- full name of the non-lawyer
- whether the non-lawyer is a law clerk, paralegal, qualified or non-qualified legal executive
- details of the work undertaken by the non-lawyer and what it relates to in the proceedings steps
- the reason for the non-lawyer undertaking the activities and the necessity of the work undertaken.

#### Notes:

- pre-approved for family, civil and criminal pre-fixed fee cases or non-fixed fee cases
- in fixed fee cases, non-lawyers' costs are deemed to be included in the fixed fee and cannot be claimed as a disbursement, unless approved via an application for amendment to grant
- requires prior approval via an application for amendment to grant for civil and family (fixed fee plus) cases, criminal (complex or high cost) and Waitangi cases
- in non-fixed fee cases and pre-fixed fee cases, the number of hours taken by a non-lawyer to complete a task is claimed as a disbursement
- not available for family or criminal fixed-fee cases
- for VOaVO (respondent) and PPO cases, any lawyer who accompanies a provider (to, for example, witness documents signed by the respondent) are deemed in this instance to fall under the 'non-lawyer' disbursement policy
- a GST receipt or copies of timesheets, invoices or other documents establishing that the non-lawyer worked the hours is not required to support a claim for reimbursement
- non-lawyers are reimbursed at the following rates:
  - qualified legal executive: \$82/hr
  - law clerk, non-qualified legal executive, paralegal: \$72/hr.

## Other LINZ fees

All fees associated with other LINZ activities such as withdrawals of caveats, registration and discharge of a notice of claim:

- are not applicable in VOaVO, PPO or Children's Workers exemption appeals cases
  - are pre-approved for all other cases

- will be reimbursed on an actual and reasonable basis, a GST receipt is not required
- we reserve the right to request receipts if grants officers have any concerns.

With respect to withdrawal of caveat LINZ fees, reimbursement for those fees:

- for civil and Waitangi cases can be claimed under the legal aid grant when the fee is incurred during a live case
- cannot be claimed under the legal aid grant where the activity relates to a release of security after the case is disposed of.

## Private investigator

We may approve a private investigator if the provider can demonstrate why the services of a private investigator are required, and how these services will contribute to a successful outcome for their client.

- requires prior approval via an application for amendment to grant for criminal and family cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Title search

A title search is an examination of public records to determine and confirm a property's legal ownership and find out what claims are on the property.

Title searches are sometimes required to confirm whether the client is named as a legal owner of a specific property or to confirm that caveats and/or statutory land charges have been registered.

- not applicable in VOaVO, PPO or Children's Workers exemption appeals cases
- pre-approved for all other cases
- reimbursement will be on an actual and reasonable basis, a GST receipt is not required

## Transcript

A transcript is a written, word-for-word record of what was said in a trial or other court proceeding. It is uncommon for transcriptions of recorded hearings to be funded, as the provider is expected to take notes if they are present at the hearing.

- requires prior approval via an application for amendment to grant for all cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Witness expenses

This disbursement is for ordinary witnesses' expenses. Separate policies apply to the costs of expert witnesses.

Providers may claim witness expenses only where, in the provider's assessment, the cost of attending a hearing may be an obstacle to a witness's attendance.

Subject to that assessment, the following witness expenses are pre-approved for all law types except Waitangi:

- the fees available under clause 3 of the Schedule to the Witness Fees and Interpreter's Regulations 1974 and the allowances under clauses 6 or 7 of the Schedule, whichever is applicable
- actual and reasonable local travel costs including:
  - public transport
  - private car mileage at the IRD rate (presently \$0.83 per km)
  - parking and
  - taxi/private passenger vehicle (e.g. uber), if other methods of transport are not available.

The Schedule to the Witness Fees and Interpreter's Regulations 1974 is available here:

<http://www.legislation.govt.nz/regulation/public/1974/0124/latest/DLM42612.html> . The

Regulations apply to witnesses for the Crown however, the same fees and allowances will be available to a legal aid provider's witnesses.

The following witness expenses will require prior approval:

- all witness costs in Waitangi cases
- the costs of any airfares, and if an overnight stay is necessary, accommodation
- any other costs.

In determining whether travel by air is necessary, the provider is expected to consider whether the witnesses' evidence can be effectively given by audio visual link.

Where a witness is a school child, or a child under school age, fees and allowances are not payable. However, a parent or guardian who needs to attend with any child witness, may be paid the fees and allowances, as well as reasonable travel costs in accordance with this policy for themselves and the child.

## Expert witness

An expert witness is a skilled witness on issues that relate to their profession – for example, an accountant specialising in forensic accounting, a psychiatrist specialising in child abuse or a ballistics expert. We may approve engaging the services of an expert witness if the provider can:

- outline who the Crown witnesses are, including the nature of their expertise and evidence
- demonstrate why the proposed expert's attendance is necessary to address the Crown evidence, and
- confirm that any potentially less expensive sources of evidence have been considered, including whether it may be cheaper in the long term to approve payment of an interim report to ascertain the expert's initial views.

If engagement of an expert outside the area in which the case is held is sought, reasons must be provided as to why a local expert cannot be used and evidence should be provided demonstrating that reasonable enquiries into local experts have been made.

If engagement of an overseas expert is sought, the provider should be able to provide the following additional information to justify the request:

- confirmation of the specific enquiries made to instruct a New Zealand based expert
- details of the numbers and locations of New Zealand based experts in the relevant specialisms, and which of these experts were approached for instruction, and their response
- why any of the listed New Zealand experts were not approached by the provider

This disbursement does not cover report preparation, only appearances by expert witnesses. The preparation and provision of a report is covered by the disbursement for specialist reports.

- requires prior approval via an application for amendment to grant for all cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

For Waitangi cases, the expert must be relevant and necessary to progress the particular claim in the Tribunal.

Providers must apply for prior approval for an expert's costs. The application must include a quote from the expert that includes the full cost, including the costs of any disbursements, and a description of the evidence to be given, as well as advice on whether or not other funding agencies have provided funding (or been approached to provide funding) for work by the expert (and if so what funding and what work).

# Office related disbursements

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**For all cases (except criminal fixed fee cases), the provider may claim up to \$100 (excl. GST) per grant for office costs that are directly attributable to the conduct of a case. These costs are called the office disbursement.**

Receipts are not required for the office disbursement; however the provider must nevertheless retain sufficient documentary evidence and records to be able to support each claim in the event of an examination and/or audit. The office disbursement is intended to cover:

- cell phone and toll calls
- postage, courier and fax
- photocopying, printing and binding.

For family, civil or criminal (non-fixed fee, Complex and High Cost cases), an application for amendment to grant should be made where the office disbursement is likely to exceed \$100 (excl. GST), for the specific office disbursement being sought (e.g. photocopying).

Office overheads and running costs will not be reimbursed. These include but are not limited to:

- secretarial and administrative costs
- equipment rental (including gowns) and running costs
- phone rental and phone plans
- local phone calls.

For criminal fixed fee cases, the office disbursement is deemed to be included in the fixed fee. However, an application for amendment to grant will be considered for specific office related costs if the provider can demonstrate that the fixed fee is completely inadequate (e.g. additional photocopying due to large volumes of disclosure).

## Cell phone and toll calls

During the course of proceedings cell phone and toll calls may be required. They are covered by the office disbursement allocation of up to \$100 (excl. GST) per grant. The provider is encouraged to choose calling options that minimise phone costs.

For civil, family and criminal (non-fixed fee) cases, an application for amendment to grant should be made where the office disbursement is likely to exceed \$100 (excl. GST), and funding for cell phone and toll calls is required.

For criminal fixed fee cases, an application for amendment to grant will be considered for cell phone and toll calls if the provider can demonstrate that the fixed fee is completely inadequate.

A trigger for approval will include a statement on the amendment to grant form such as “the client does not have a landline or the client or the other party’s lawyer resides overseas.

- requires prior approval via an application for amendment to grant for all cases
- reimbursement will be on an actual and reasonable basis, a GST receipt is not required

## Photocopying, printing and binding (excluding for court-directed bundles of documents)

Photocopying, printing and binding costs are covered by the office disbursement allocation of up to \$100 (excl. GST) per grant except in criminal fixed fee cases.

For civil, family, criminal (non-fixed fee) or Waitangi cases, an application for amendment to grant should be made where the office disbursement is likely to exceed \$100 (excl. GST), and funding for photocopying, printing or binding (excluding for Court of Appeal casebooks or court-directed bundles of documents) is required.

For criminal fixed fee cases, an application for amendment to grant will be considered for photocopying, printing or binding (excluding for disclosure, parole board files and Court of Appeal casebooks) if the provider can demonstrate that the fixed fee is completely inadequate.

Costs of scanning documents may be included in an amendment to grant application where scanning has been provided by a third party.

For Waitangi cases, copies of reports and other Tribunal documents are to be provided in electronic form to the greatest extent possible. Where hard copies are required, we will fund the cost of printing one copy for the claimant/legal aid applicant. Multiple copies for members of a wider claimant group will not be funded, unless deemed necessary. Where it is reasonable, providers are required to provide summaries or partial documents rather than full copies.

- requires prior approval via an application for amendment to grant for all cases
- reimbursement for photocopying and printing will be at a maximum rate of \$0.10 (excl. GST) per page
- reimbursement for binding will be at a fair and reasonable rate
- a GST receipt is required to support a claim for reimbursement where the photocopying, scanning, printing or binding has been provided by a third party, otherwise a GST receipt is not required.

## Printing of disclosure

We reimburse the actual costs associated with printing disclosure. Reimbursement amount is \$0.10 per page up to a maximum of \$500.

- pre-approved for criminal cases.
- if actual costs associated with the printing are higher than those pre-approved, reimbursement can be claimed through prior approval via an amendment to grant for the **amount in excess of that pre-approved**.
- a GST receipt is not required to support a claim for reimbursement.

## Photocopying of trial file (where 'trial counsel error' is a ground of a criminal appeal)

Where 'trial counsel error' is a ground of a criminal appeal, the appellate counsel (where legally aided) may claim a preapproved fee for the costs of photocopying the trial file.



This is to ensure both trial and appellate counsel have access to the relevant file information.

The pre-approved amount is \$0.10 per page.

Notes:

- This is a preapproved disbursement for appellate counsel in criminal appeal cases
- A GST receipt is required to support a claim for reimbursement where the photocopying has been provided by a third party, otherwise a GST receipt is not required.
- This disbursement can be claimed even where only an interim grant of aid has been made for the appeal
- This disbursement is in addition to the disbursement for photocopying, printing and binding

## Printing of emailed Court of Appeal casebooks

We reimburse the actual costs associated with printing Court of Appeal casebooks in criminal (except High Cost) cases, where those have been emailed to the provider by the court. Reimbursement amount is \$0.12 per page up to a maximum of \$120.

- pre-approved for criminal (except for High Cost) cases.
- if actual costs associated with the printing of Court of Appeal criminal casebooks are higher than those pre-approved, reimbursement can be claimed through prior approval via an amendment to grant for the **amount in excess of that pre-approved**.
- requires prior approval via an application for amendment to grant for criminal High Cost cases.
- a GST receipt is not required to support a claim for reimbursement.

## Printing of parole board files

We reimburse the actual costs associated with printing parole board files. Reimbursement amount is \$0.12 per page up to a maximum of \$24.

- pre-approved for criminal (except for High Cost) cases.
- if actual costs associated with the printing are higher than those pre-approved, reimbursement can be claimed through prior approval via an amendment to grant for the **amount in excess of that pre-approved**.
- requires prior approval via an application for amendment to grant for criminal High Cost cases.
- a GST receipt is not required to support a claim for reimbursement.

## Court-directed bundles of documents

We reimburse the actual costs associated with preparing court-directed bundles of documents in civil and family cases, including for photocopying, printing, collating, dividing, and binding.

For **ACC cases**, the maximum pre-approved rates and amounts are:

- third-party preparation - \$0.12 (excl. GST) per page up to a maximum of \$240
- in-house preparation - \$0.12 (excl. GST) per page up to a maximum of \$72.

For **all other civil cases**, the maximum pre-approved rates and amounts are:

- third-party preparation - \$0.12 (excl. GST) per page up to a maximum of \$300
- in-house preparation - \$0.12 (excl. GST) per page up to a maximum of \$90.

For **family cases**, the maximum pre-approved rates and amounts are:

- third-party preparation - \$0.12 (excl. GST) per page up to a maximum of \$360
- in-house preparation - \$0.12 (excl. GST) per page up to a maximum of \$108.

For **Waitangi cases**, reimbursement will be at the rate of \$0.12 per page and requires prior approval via an amendment to grant

- this is a pre-approved disbursement for all civil and family cases.
- if actual costs associated with the preparation of court-directed bundles in civil and family cases are higher than those pre-approved, reimbursement can be claimed through prior approval via an amendment to grant **for the amount in excess of that pre-approved**
- a GST receipt is required to support a claim for reimbursement where the photocopying, printing, collating, dividing, and binding are provided by a third party, otherwise a GST receipt is not required.

## ERA-requested bundles of documents

We reimburse the actual costs associated with preparing Employment Relations Authority-requested bundles of documents in Employment fixed fee cases, including for photocopying, printing, collating, dividing, and binding.

The maximum pre-approved rates and amounts for employment fixed fee cases are:

- third-party preparation - \$0.12 (excl. GST) per page up to a maximum of \$300
- in-house preparation - \$0.12 (excl. GST) per page up to a maximum of \$90.

## Postage, courier and fax

Postage, courier and fax costs are covered by the office disbursement allocation of up to \$100 (excl. GST) per grant.

For criminal fixed fee cases, an application for amendment to grant will be considered for postage courier or fax services if the provider can demonstrate that the fixed fee is completely inadequate.

For civil, family, criminal (non-fixed fee) and Waitangi cases, an application for amendment to grant should be made where the office disbursement is likely to exceed \$100 (excl. GST), and funding for postage, courier or fax services are required.

- requires prior approval via an application for amendment to grant for all cases

- reimbursement will be on an actual and reasonable basis, a GST receipt is not required

# Specialist reports

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**We recognise that the provider may need to engage specialist third party service providers to prepare reports on specific matters related to the conduct of the case.**

The following reports are available. Specialist reports other than those identified below may be required. The provider must obtain prior approval via an application for amendment to grant before obtaining a specialist report other than those listed here.

The application for amendment to grant must demonstrate why the report is needed and how it will contribute to a successful outcome for the client. The following information should be included with the amendment:

- the nature of the Crown's evidence
- how the proposed report will assist with the client's defence
- what the proposed specialist is capable of addressing
- why that is necessary in this case, and
- why more than one specialist report may be necessary (if applicable).

The request for approval should include the specialist's fee to prepare the report and their disbursements, if any.

If engagement of a specialist outside the area in which the case is held is sought, reasons must be provided as to why a local specialist cannot be used and evidence should be provided demonstrating that reasonable enquiries into local experts have been made.

If engagement of an overseas specialist is sought, the provider should be able to provide the following additional information to justify the request:

- confirmation of the specific enquiries made to instruct a New Zealand based specialist
- details of the numbers and locations of New Zealand based specialist in the relevant specialisms, and which of these specialists were approached for instruction, and their response
- why any of the listed New Zealand specialists were not approached by the provider

## Critique/Opinion

A critique is a second specialist's opinion, usually on a specialist report provided by another service provider.

- requires prior approval via an application for amendment to grant for all cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Forensic

Forensics is the application of scientific knowledge and methodology to legal problems and/or criminal investigations. In the context of civil law, a forensic report may involve the collection and analysis of data according to accepted professional standards, e.g. forensic accounting.

For criminal law, a forensic report involves the scientific collection and analysis of physical evidence. This includes the analysis of many kinds of materials, including blood, fibre, bullets, and fingerprints.

- requires prior approval via an application for amendment to grant for all cases (excluding ACC, VOaVO and Children's Workers exemption appeals)
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Medical

Medical report in this context means reports prepared by registered medical practitioners, dental practitioners, nursing and allied health staff (e.g. physiotherapist).

Examples are applicable in different case laws. In the context of an employment case, a copy of a doctor's report may be required to provide evidence that the legally aided person is affected by stress associated with difficulties at the workplace. For a criminal assault case, a copy of a doctor's report may be required to review medical evidence of the assault that was prepared for the prosecution. For a family violence case, a copy of a doctor's report may be required to provide evidence of physical abuse.

Psychiatric and psychologist reports have their own disbursement and are not included here.

- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim
- a full copy of medical reports is not required as evidence in ACC cases, but should be available on request
- requires prior approval via an application for amendment to grant for criminal High Cost cases and most civil cases

Cases that are pre-approved are:

- family
- criminal (except High Cost)
- ACC
- where a Judge in a VOaVO case requests a medical report relating to either party.

ACC cases must apply for prior approval via an amendment to grant in certain circumstances, as listed below:

- the medical report is the second or subsequent report sought for the same client and related to the same injury **OR**
- the medical report is sought from an expert who does not reside in NZ or Australia **OR**
- the expected cost of the report is greater than \$5,000.

## Psychiatric/Psychologist

This disbursement covers proceedings under the Mental Health Act 1992 and any other cases in which a psychiatric/psychologist report is required. This report must be provided by a registered psychiatrist or psychologist.

- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim
- a full copy of psychiatric/psychologist reports is not required as evidence in ACC, VOaVO (respondent) and PPO cases, but should be available on request
- requires prior approval via an application for amendment to grant in most civil cases and for all criminal and family cases.

Cases that are pre-approved are:

- ACC
- VOaVO (respondents)
- where a Judge requests a psychiatric or psychologist's report relating to a VOaVO applicant
- PPOs
- Children's Workers exemption appeals.

The cases listed above (excluding VOaVO applicants) must apply for prior approval via an amendment to grant in certain circumstances, as listed below:

- the psychiatric/psychologist report is the second or subsequent report sought for the same client and related to the same injury **OR**
- the psychiatric/psychologist report is sought from an expert who does not reside in New Zealand or Australia **OR**
- the expected cost of the report is greater than \$5,000.

## Restorative Justice

A restorative justice report will sometimes be required. It is prepared by a restorative justice facilitator after the restorative justice conference. The purpose of the report is to document the outcome of the conference, including any plans of action agreed between the victim and the offender. This disbursement covers the cost of the report only. It does not cover the cost of the Restorative Justice Conference.

- this disbursement is not applicable in most civil cases or criminal High Cost cases
- this disbursement is pre-approved in these cases:
  - VOaVO respondents
  - VOaVO applicants if requested by a Judge
  - Criminal (except High Cost)
  - PPO respondents
- VOaVO applicants (where a report is not requested by a Judge) may seek prior approval for a Restorative Justice report via an amendment to grant
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

# Valuation

Property and business valuations may be required to confirm each party's financial interest in the property or other issues in dispute.

- not available for ACC, VOaVO, PPO or Children's Workers exemption appeals cases
- pre-approved for other civil and family cases
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

# Travel disbursements

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We recognise that from time to time it will be necessary to travel to meet with clients, witnesses and experts, and to attend hearings and meetings.

For Waitangi cases, where the costs relate to more than one client, they should be split between the relevant clients and clearly identified in the invoice. The information provided on the invoice should include the number of files and how the amount claimed has been apportioned between the files.

## Necessary travel

In general, travel disbursements require prior approval; however, it may not always be possible. Subject to any requirements that are imposed as a condition of assigning a specific case to a provider in the following circumstances:

Travel is pre-approved when travel is necessary, non-local<sup>3</sup> **and** is:

- to a place of detention (including prisons, mental health institutions and refugee detention centres) to take or update instructions **or**
- to a court, for attendance at a hearing<sup>4</sup> **or**
- the destination is the court, the local or preferred court has closed and the date of travel is within 6 months of the date the local court officially closed **or**
- to a parole hearing venue for attendance at a hearing (criminal only).

Travel is also pre-approved, when travel is necessary, when it is local **and**:

- is to a place of detention (including prisons, mental health institutions and refugee detention centres) to take or update instructions **or**
- the destination is the court, and the local or preferred court has closed and the date of travel is within six months of the date the local court officially closed **or**
- to a parole hearing venue for attendance at a hearing (criminal only).

Where travel is necessary, the provider may claim reimbursement for:

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<sup>3</sup> *Non-local travel*: is defined as travel involving a return trip from the provider's normal place of work to the travel destination where:

- the return distance is greater than 50 kilometres OR
- the return travel time is greater than one hour AND
- if the destination is the court, the provider is not on the assignment list for that court. This excludes providers who are assigned a case to a location/court on the Location exceptions list (see page 57) as they may claim travel costs despite being on the assignment list for that court. (criminal only).

<sup>4</sup> *Hearing*: is defined as an attendance before a judge, attendance at a court and any fixed fee where legal aid would approve hearing time.



- either use of the provider’s personal vehicle, a rental vehicle or a taxi/ride service
- travel time
- petrol (when hiring a rental car)
- train and bus
- parking.

The above scenarios do not apply to Waitangi Tribunal cases. All other provider travel disbursements require prior approval via amendment to grant.

In High Cost Criminal cases, it is accepted that during the initial phase of the case, the provider may have to travel at short notice to visit their client. In view of this, where travel meets the necessary travel criteria above, it is pre-approved.

For AODT court cases, travel time and mileage is not able to be claimed at rostered or elected court locations. However, travel may be considered if it is non-local and is to attend as a replacement for another rostered AODT defence lawyer.

In determining whether travel is necessary, the provider is expected to consider whether the attendance can be effectively carried out another way; for example, via telephone, or the relevant person travelling to the provider’s normal place of work<sup>5</sup>.

If travel is necessary, we will approve and reimburse actual and reasonable expenditure on non-local travel including transport, accommodation and meals, and travel time that is directly attributed to the conduct of the case and in accordance with the requirements outlined in this policy.

Where a maximum amount is specified in relation to a particular disbursement, only the actual amount incurred up to that maximum will be reimbursed, unless there are exceptional circumstances that need to be taken into account.

Consideration of the reasonableness of an application for amendment to grant and a claim will include whether there is or was a more cost-effective method of travel available and may take into account the following factors:

- the availability of providers in the ‘local’ travel area with the appropriate approvals and/or expertise in the matter
- the existence of any conflicts of interest among counsel within a ‘local’ travel area necessitating reassignment of the matter to a lawyer/other provider located outside the area
- the location of the ‘other party’
- the location of the Tribunal hearing (Waitangi only)
- the ability of the legally aided person and/or person significant to the matter to travel
- whether the most cost-effective travel option has been chosen
- the [provider assignment policy](#), which allows for preferred providers and by-rotation providers, and whether the matter should have been reassigned, or an agent appointed. The assignment policy also covers situations of providers travelling between cities.

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<sup>5</sup> *Normal place of work*: this is defined as the centre of the city or town where the provider’s office of chambers is located. Travel distances are measured from the provider’s normal place of work, not from the provider’s home unless specified otherwise.

## Inactive inquiry – Waitangi cases

Where a grant of aid has been approved in an inactive inquiry, non-local travel costs of up to \$400 (excl. GST) are pre-approved.<sup>6</sup> The pre-approved travel costs do not include travel time.

The pre-approved travel costs include disbursements for:

- accommodation and meals
- parking
- personal car
- rental car
- taxi/ride service.

Claims for individual pre-approved travel disbursements will only be paid if the specific criteria relating to maximum rates, documentary requirements and exclusions for each disbursement are met.

The requirement to obtain prior approval for each disbursement does not apply to travel costs incurred in respect of inactive inquiries.

## Disbursements

### Accommodation and meals

If an overnight stay at the travel destination is necessary, a maximum amount of \$226.05 (excl. GST) per day is available to reimburse accommodation and meal costs.

Where overnight accommodation is not required, a maximum amount of \$47.80 (excl. GST) per day is available to reimburse meal costs.

The number of days for which accommodation and meals are claimed must be recorded on the invoice. We will not reimburse Koha.

Expenses that will not be reimbursed include alcohol, minibar and snack bar costs and hotel room video or movie charges.

- requires prior approval via an application for amendment to grant for all cases
- reimbursement will be on an actual and reasonable basis.

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<sup>6</sup> See 'Inactive inquiries' in 'Granting aid for Waitangi Tribunal Matters', 30 September 2012.

- GST receipts are not required to support a claim for reimbursement for meal costs, although we reserve the right to request these if grant officers have any concerns. GST receipts for accommodation expenses are required

## Parking

Parking costs apply when either a personal car or rental car is used. Valet parking and parking infringement fines are not reimbursed.

- pre-approved where the criteria for necessary travel are met for all cases (except Waitangi)
- for Waitangi cases or where the criteria for necessary travel are not met, disbursement requires prior approval via an application for amendment to grant
- reimbursement will be on an actual and reasonable basis, a GST receipt is not required

## Personal car

When using a personal car, mileage at the applicable IRD rate may be claimed as a reimbursement. Evidence of travel distance is not required but should be recorded on the invoice. The cost of petrol cannot be claimed in addition to the IRD rate. Insurance excess and fines will not be reimbursed.

- pre-approved where the criteria for necessary travel are met for all cases (except Waitangi)
- for Waitangi cases or where the criteria for necessary travel are not met, this disbursement requires prior approval via an application for amendment to grant
- reimbursement will be at the IRD rate which is currently \$0.83 (excl. GST) per kilometre, a GST receipt is not required

## Plane, train and bus

Where non-local travel is necessary, the most efficient mode of transport should be selected and booked in advance to obtain the most cost-effective fare. It is recognised that transferable fares can be cost-effective compared with repeated claims for non-transferrable fares due to adjournments of court appearances. Where there is an option of purchasing different classes of travel, only economy class will be reimbursed. Reasonable booking costs may be included in a claim.

- plane travel is pre-approved up to a maximum amount of \$500 where the criteria for necessary travel are met for all cases (except Waitangi)
- train and bus fares are pre-approved disbursements where the criteria for necessary travel are met for all cases (except Waitangi)
- in all other cases (including Waitangi), these disbursements require prior approval via an application for amendment to grant
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Rental car

The provider may use a rental car in the course of non-local travel for a legally aided case. Rental cars should be used when other means of transport are unavailable, more costly, or impractical.

When hiring a rental car, the class of car should be the most economical option available and no larger than 2.0 litres. If a larger vehicle is required due to the nature of the trip a request, via an application for amendment to grant, along with reasons to support the request must be provided. Petrol costs can be claimed in addition to the cost of the rental. Insurance excess and fines will not be reimbursed.

- pre-approved where the criteria for necessary travel are met for all cases (except Waitangi)
- for Waitangi cases or where the criteria for necessary travel are not met, this disbursement requires prior approval via an application for amendment to grant
- reimbursement will be on an actual and reasonable basis with a GST receipt to support the claim

## Taxi

Taxis or a ride service may be used in the course of non-local travel where this form of transport is the most cost effective option to and from either the provider's home, normal place of work or travel destination and either an airport, train station, bus terminal or rental car office.

- pre-approved where the criteria for necessary travel are met for all cases (except Waitangi)
- for Waitangi cases or where the criteria for necessary travel are not met, this disbursement requires prior approval via an application for amendment to grant
- reimbursement will be on an actual and reasonable basis, however, the maximum amount that can be claimed per one way trip is \$100 (excl. GST) with a GST receipt to support the claim

## Travel time

Travel time is not available for travel from the provider's home to their normal place of work. Also, it does not apply for time spent carrying out activities that incur a fee pre-approved where the criteria for necessary travel are met for all cases. The provider may claim reimbursement for time spent in non-local travel:

- from their normal place of work to the travel destination
- from the travel destination to their normal place of work
- from the travel destination to their home.

Notes:

- where the criteria for necessary travel are not met, this disbursement requires prior approval via an application for amendment to grant for all cases
- reimbursement will be at a rate of \$63 (excl GST) per hour and can be rounded up to the nearest half hour, a GST receipt is not required



DISBURSEMENT	FIXED FEE & FIXED FEE PLUS					OTHER CIVIL
	ACC	VOaVOs	EMPLOYMENT	PPOs	CHILDREN'S WORKER APPEALS	
Witnesses' non-local travel	Prior-approval	Prior approval	Prior approval	Prior approval	Prior approval	Prior approval
<b>Prior approval travel disbursements - all case types</b>						
Accommodation and meals, private car, plane, train, bus, taxi/ride service, parking, rental car, travel time, expert witnesses travel						
<b>Pre-approved travel disbursements - all case types</b>						
Where necessary - private car, plane, train, bus, taxi/ride service, parking, rental car, travel time, travel expert witnesses						

# Criminal disbursements and case type

DISBURSEMENT	CRIMINAL FIXED FEE (INCL FIXED FEE PLUS)	CRIMINAL NON-FIXED FEE	CRIMINAL HIGH COST CASES
<b>General disbursements</b>			
Drug testing, Expert witness, Private investigator, Transcript	Prior approval	Prior approval	Prior approval
Expert Consultancy Service	Pre-approved	Pre-approved	Pre-approved
Interpreter	Pre-approved	Pre-approved	Prior approval
Library, Title search, Other LINZ fees,	Pre-approved	Pre-approved	Pre-approved
Non-lawyer	N/A – fixed fee Prior approval – fixed fee plus	Pre-approved	Prior approval
Translator	Pre-approved	Pre-approved	Prior approval
<b>Office related disbursements</b>			
Cell phone and toll calls, Postage, courier and fax, Photocopying, printing and binding	Prior approval	Prior approval	Prior approval
Office disbursement	N/A – fixed fee Prior approval – fixed fee plus	Pre-approved	Pre-approved
Photocopying of trial file	Pre-approved	Pre-approved	Pre-approved
Printing Court of Appeal casebooks	Pre-approved	Pre-approved	Prior approval
Printing of Disclosure	Pre-approved	Pre-approved	Pre-approved
Printing of Parole Board files	Pre-approved	Pre-approved	Prior approval
Witnesses' fees and allowances, and local travel	Pre-approved	Pre-approved	Pre-approved
Witnesses' non-local travel	Prior approval	Prior approval	Prior approval
<b>Specialist reports</b>			
Critique/Opinion, Forensic, Psychiatric/Psychologist	Prior approval	Prior approval	Prior approval
Medical	Pre-approved	Pre-approved	Prior approval
Restorative justice	Pre-approved	Pre-approved	N/A
<b>Travel disbursements</b>			
Accommodation and meals	Prior approval	Prior approval	Prior approval
Personal car	Prior approval	Prior approval	Prior approval
Personal car – necessary	Pre-approved	Pre-approved	Pre-approved
Plane, train, bus, taxi/ride service and parking	Prior approval	Prior approval	Prior approval
Plane, train, bus, taxi/ride service and parking – necessary	Pre-approved	Pre-approved	Pre-approved
Rental car	Prior approval	Prior approval	Prior approval
Rental car – necessary	Pre-approved	Pre-approved	Pre-approved
Travel time	Prior approval	Prior approval	Prior approval

Travel time – necessary	Pre-approved	Pre-approved	Pre-approved
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## Family disbursements and case type

DISBURSEMENT	FAMILY FIXED FEE (INCL FIXED FEE PLUS)	FAMILY PRE & NON FIXED FEE
<b>General disbursements</b>		
Birth certificate, Court filing fee, Deed of Assignment, DNA testing (for legally aided person), Document and Process server, Drug testing (Judge directed) Expert Consultancy Service, Interpreter, Library, Title search, Other LINZ fees, Translator	Pre-approved	Pre-approved
DNA testing (for other party), Drug testing, Expert witness, Private investigator, Transcript	Prior approval	Prior approval
Non-lawyer	N/A – fixed fee Prior approval – fixed fee plus	Pre-approved
<b>Office Related Disbursements</b>		
Cell phone and toll calls	Prior approval	Prior approval
Office disbursement	Pre-approved	Pre-approved
Photocopying, printing and binding	Prior approval	Prior approval
Court-directed bundles of documents	Pre-approved	Pre-approved
Postage, courier and fax	Prior approval	Prior approval
Witnesses' fees and allowances, and local travel	Pre-approved	Pre-approved
Witnesses' non-local travel	Prior-approval	Prior approval
<b>Specialist Reports</b>		
Critique/Opinion, Forensic, Psychiatric/Psychologist	Prior approval	Prior approval
Medical, Valuation	Pre-approved	Pre-approved
<b>Travel Disbursements</b>		
Accommodation and meals	Prior approval	Prior approval
Personal car	Prior approval	Prior approval
Personal car - necessary	Pre-approved	Pre-approved
Plane, train, bus, taxi/ride service and parking	Prior approval	Prior approval
Plane, train, bus, taxi and parking – necessary	Pre-approved	Pre-approved
Rental car	Prior approval	Prior approval
Rental car – necessary	Pre-approved	Pre-approved
Travel time	Prior approval	Prior approval
Travel time – necessary	Pre-approved	Pre-approved

## Waitangi disbursements and approval type

DISBURSEMENT	APPROVAL REQUIREMENTS
<b>General Disbursements</b>	
Expert witness	Prior approval
Expert Consultancy Service	Pre-approved
Library	Pre-approved
Non-lawyer	Prior approval
Title search	Pre-approved
Other LINZ fees	Pre-approved
Transcript	Prior approval
Witnesses' fees and allowances, and local travel	Prior-approval
Witnesses' non-local travel	Prior-approval
<b>Office Related Disbursements</b>	
Cell phone and toll calls	Prior approval
Office disbursement	Pre-approved
Photocopying, printing and binding	Prior approval
Court-directed bundles of documents	Prior approval
Postage, courier and fax	Prior approval
<b>Specialist Reports</b>	
Critique/Opinion	Prior approval
<b>Travel Disbursements</b>	
Accommodation and meals	Prior approval
Parking	Prior approval
Personal car	Prior approval
Plane, train and bus	Prior approval
Rental car	Prior approval
Taxi/ride service	Prior approval
Travel time	Prior approval

# Withdrawal of legal aid

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THE KEY SECTIONS OF THE ACT ARE:

- section 29: Withdrawal of, or amendment to, grant of legal aid: criminal matters
- section 30: Withdrawal of, or amendment to, grant of legal aid: civil matters
- section 31: Withdrawal of grant
- section 32: Consequences of withdrawing legal aid.

A request to withdraw legal aid can be made by the aided person, lead provider or third party. The Commissioner may withdraw aid at his/her discretion in certain circumstances and must withdraw in other situations.

## Criminal legal aid

The Commissioner may at any time withdraw aid in a criminal matter under section 29 of the Act if the Commissioner is satisfied that:

- the aided person has sufficient means to obtain legal representation
- the interests of justice no longer requires it or
- the aided person requests it.

The Commissioner will not withdraw aid in a criminal matter if the aided person defaults on a condition of the grant. However, it may amend the conditions on the grant if they are no longer appropriate under section 29(b) of the Act.

## Family and civil legal aid

The Commissioner must withdraw aid under section 30(1) of the Act if the applicant:

- doesn't meet the conditions of grant requirements within the prescribed time frame and/or
- was not entitled to aid under section 12(1) and
- section 12(2) of the Act does not apply.

The Commissioner may withdraw aid under section 30(2) of the Act if the Commissioner is satisfied that:

- the aided person is no longer entitled under sections 10,12 or 13 of the Act
- the proceedings have been disposed of
- the aided person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Commissioner or has required unreasonably that the proceedings be continued
- that the aided person no longer has reasonable grounds for taking, defending, or being party to the proceedings, or it is unreasonable or undesirable in the circumstances to continue aid
- the aided person has intentionally or negligently made untrue statements about resources or failed to disclose material concerning them

- the aided person has intentionally contravened or failed to comply with the Act and Regulations.
- the aided person requests that legal aid be withdrawn (in this case aid will be withdrawn immediately without notice).

## Notice of intention to withdraw

If the Commissioner decides that aid should be withdrawn then a notice of intention to withdraw will be issued and include details of:

- the relevant section of the Act
- stipulated time frame of 21 days within which to submit a response
- the final invoice (if applicable).

Consideration will be given to:

- the interests or welfare of the aided person
- whether the aided person is currently involved in mediation
- whether the dispute is close to being resolved (or the case finalised).

## Withdrawal of legal aid

This section applies only to a substantive grant and not to aid granted on an interim basis. If no submissions are received within the time frame or the response submissions are not accepted then legal aid will be withdrawn under section 31 of the Act. The letter of withdrawal will specify:

- the relevant section of the Act
- the withdrawal date (the Commissioner is not obliged to pay for any work undertaken after this date)
- reasons for the withdrawal
- request to inform other parties under section 24(3) of the Act
- request for final invoice
- reconsideration and/or review rights.

# Reconsideration and review

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The Legal Services Act 2011 (the Act) retained the reconsideration and review mechanisms that were in effect under the Legal Services Act 2000 (LSA 2000). However, the following changes are significant:

- the Legal Aid Tribunal (LAT) is an independent review body with a full-time chairperson. It replaces the Legal Aid Review Panel (LARP)
- LAT members, except for the chairperson, are lawyers and legal aid providers
- LAT is administered by the Special Jurisdictions unit of the Ministry of Justice (the Ministry) where each review request (if accepted) is allocated to a case manager and given a unique identifier
- prior to applying to LAT for a review a legally aided person or applicant for legal aid must have the decision reconsidered by the Commissioner. Legal aid providers cannot seek a reconsideration or review in their own right unless it is a matter that falls under s 130 of the Act. That is, it specifically refers to a decision regarding the amount payable to the provider for services provided before 1 July 2011
- applications for reconsiderations and reviews other than those under s130 are restricted to legally aided persons and applicants. There are no appeal rights for providers against these decisions
- an application for reconsideration must be made within 20 working days after the date of the decision. A late application may be made within 3 months after the date of the decision and will only be accepted under exceptional circumstances.
- the legal aid granting and disputes resolution process is a formal disputes resolution process available to providers where the provisions for reconsideration and review are not available.

## Reconsideration by the Commissioner

The key section of the Act is s 51 - Reconsideration.

An applicant for legal aid or an aided person who is aggrieved by a decision of the Commissioner can apply to the Commissioner for reconsideration of the decision. Where the legal aid provider is acting as the client's agent or counsel, it is permissible for that provider to sign on behalf of the legally aided person or applicant provided they have been instructed to do so by the client. When submitting an application for reconsideration on behalf of a client, we expect the legal aid provider to have outlined to the client the possible outcomes of the reconsideration, and how those outcomes may impact on the client. For example, if the reconsideration relates to a decision to refuse an amendment request, the client should be made aware that any decision contrary to the original decision may impact on the amount of any repayments that the client may be required to make.

A provider can only apply for a reconsideration in their own right where their claim has been declined under s 99(5) for being made outside of the time frame referred to in s98.

All reconsideration applications must be submitted within 20 working days after the date of the decision. A late application may be accepted if it was made no more than three calendar months after notice of the decision was given and it identifies the exceptional circumstances which prevented it from being made within the required time frame.

Where the applicant has applied to the Commissioner for payment of costs under s 46 (award of costs in family/civil proceedings), there is no need to first seek a reconsideration by the Commissioner. In these circumstances, a review application can be made directly to LAT.

A reconsideration can be undertaken of any decision of the Commissioner that affects the person applying for the reconsideration. This includes a decision:

- not to grant legal aid
- regarding setting conditions on a grant
- regarding setting the repayment
- relating to the maximum grant
- relating to withdraw legal aid.

The Commissioner will delegate responsibility for undertaking the reconsideration to someone other than the person who made the original decision. This includes reconsiderations directed by LAT. The Commissioner may decline to reconsider a decision if it has already been reconsidered, or if a reconsideration has already been undertaken of a decision relating to substantially the same issue. Any new or additional information will be taken into account. The result of the reconsideration will be sent to the applicant.

Applications for reconsiderations must be made in the prescribed manner on [Form 11](#).

Legal aid may be available for providers to prepare applications for reconsiderations. To determine whether legal aid can be approved for a reconsideration, a merits test is required under s 7(1)(e)(v) and s 10(4)(d).

If there is an existing legal aid grant in place, and legal aid for the reconsideration is approved, it will be as an amendment to grant. If there is no existing legal aid grant, aid may be approved as an interim grant of the refused legal aid application.

An applicant will be required to submit a new civil legal aid application form where:

- there is no existing grant, and
- the decision at issue does not concern merits or interest of justice, or
- it is a Waitangi proceeding, or
- legal aid cannot be approved for other eligibility reasons (e.g. the matter has been disposed and there is no remaining discretion to approve aid).

If the reconsideration is approved as civil legal aid, it will be managed by way of an interim grant

Where legal aid is approved for a reconsideration, it will be paid as a flat fee of \$100 excluding GST. The flat fee includes any disbursements that may be applicable.

## Review by the Legal Aid Tribunal

The key sections of the Act are:

- s 46 Costs of successful opponent of aided person

- s 52 Grounds for review
- s 53 Application for review
- s 54 Powers and duties of chairperson of Tribunal on receipt of application for review
- s 62 Legal Aid Tribunal established.

The applicant must apply for a review of the reconsideration decision within 20 working days of the decision date. A late application may be accepted if it is made within three months after the date of the Commissioner's decision and exceptional circumstances prevented the application from being made within the 20-working day time frame. The tribunal may take into account whether the reconsideration application was also filed out of time and the reasons for that.

LAT is a statutory body established under s 62 of the Act to review certain decisions made by the Commissioner. All members are appointed by the Governor-General on the recommendation of the Minister of Justice. The Chair cannot be a legal aid provider and must have held a practising certificate for at least seven years.

A legally aided person or an applicant for legal aid may apply to LAT to review the outcome of reconsideration by the Commissioner, however where the legal aid provider is acting as the client's agent or counsel, it is permissible for them to sign on behalf of the legally aided person or applicant provided they have received instructions to do so and we expect the legal aid provider to have outlined to the client the possible outcomes of the review, and how those outcomes may impact on the client.

The tribunal requires a copy of the reconsideration decision and any other relevant documents to be submitted along with the review application. If reconsideration has not yet been sought then the application for review will be declined.

The only exceptions to this requirement are where:

- the decision involves an award of costs under s 46 of the Act; in such situations, a review application may be made directly to LAT (see above)
- the Commissioner has failed or refused to make or reconsider a decision (for the purposes of review this is included as a decision).

The grounds for reviewing a reconsideration decision are that the decision must be manifestly unreasonable or wrong in law or both.

The tribunal may review decisions that relate to any one or more of the following:

- an application for legal aid including declining an application
- the maximum level of legal aid granted
- the amount that is to be repaid by a person who is granted legal aid
- the conditions placed on a grant under s 18 or 47 of the Act
- withdrawal of a grant or an amendment of a grant
- enforcement of conditions on the grant under s 18 or 47 of the Act
- changes to or dealings with a charge placed on property against a grant
- payment of costs awarded to an opponent in a family/civil case.

In determining the application, the tribunal will do one of the following:

- confirm the decision under review

- modify the decision
- reverse the decision.

Alternatively, instead of determining a review the tribunal may:

- direct the Commissioner to reconsider all or part of the decision (especially where new or additional information is provided at review but wasn't when making the reconsideration decision)
- refuse jurisdiction to hear the matter and dismiss it.

The right of appeal to the High Court on a point of law and the right of judicial review remain. Applicants can apply online using the online form available on the LAT website.



# Complaints

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A complaint about clients or Legal Aid should be raised with the legal aid office in the first instance. If it cannot be resolved by a Grants Officer then it will be escalated to a Team Manager. If investigation of a complaint is not resolved to the satisfaction of the client/provider, then it will be reviewed by the Manager, Legal Aid Grants.

The following types of complaints will be considered under this procedure:

- timeliness of response or decisions
- management of the application or case
- granting policy
- granting procedures, and
- other complaints for which there is no alternative avenue or policy.

Complaints relating to legal aid staff actions or behaviour will be referred directly to a Team Manager. Complaints about providers will be referred to the Complaints Investigator. Complaints concerning the quality of service from providers will be referred on for an audit under s 91 of the Act. This is a discrete procedure outside the scope of the complaint handling procedure.

To consider the complaint or to conduct an effective investigation, we may seek authorisation to disclose details of the complaint to a third party. Without such authorisation, our ability to manage the complaint may be constrained, and we will decide whether or not to proceed with an investigation. The complainant will be advised accordingly.

We will attempt to restore the circumstances that existed prior to the cause of the complaint. If the complaint is justified, we will consider what the complainant believes to be the appropriate remedy.

# Granting and invoicing dispute resolution

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## When does it apply?

Where a legal aid provider has a dispute with legal aid, their first step should be to contact the relevant legal aid office and resolve the dispute informally. The legal aid granting, and disputes resolution process (the disputes resolution process) should only be used where the informal process has failed to resolve the dispute.

The disputes resolution process is a formal dispute resolution process for legal aid providers where a legal aid provider disagrees with a legal aid grants decision made by the Legal Services Commissioner (the Commissioner).

The disputes resolution process does not apply to:

- a legally aided person or a person who has applied for legal aid where they may be aggrieved by a decision about legal aid
- any decision where any person may apply to the Commissioner for a reconsideration of the decision
- any decision where any person may apply to the Legal Aid Tribunal for a review of the decision
- any decision made by the Secretary of Justice (the Secretary) about an application to provide legal services, or
- any other decision made by the Secretary.

In particular, the dispute resolution process is not available to a provider who disagrees with a Commissioner decision to decline an invoice submitted outside the regulatory timeframe. Providers may ask the Commissioner to reconsider those decisions under section 51(1A) of the Legal Aid Services Act 2011 (the Act) and if not satisfied they may seek a review of the decision by the Legal Aid Tribunal.

The disputes resolution process is available within 20 working days of a Commissioner decision.

In exceptional circumstances, the disputes resolution process may be available within 3 months of the Commissioner's decision, provided that exceptional circumstances prevented the provider from making a timely request.

## The process

The legal aid granting and invoicing disputes resolution process provides a formal dispute resolution process and, if the dispute is not resolved, an opportunity for subsequent review of a Commissioner's decision as shown below:

#### Step One

The provider writes to the Commissioner identifying the decision and outlining the reasons why the dispute resolution process is sought.

#### Step Two

After the request is received, the Commissioner will delegate responsibility to a Team Manager or Grants Officer, other than the original decision-maker, to undertake the dispute resolution process. The assigned Team Manager or Grants Officer will review the decision and advise the provider of the dispute resolution outcome.

#### Step Three

If the provider disagrees with the dispute resolution outcome, the provider may write to the Commissioner seeking a subsequent review of the dispute resolution outcome.

#### Step Four

A panel, comprising of the Manager, Legal Aid Grants from outside the office where the informal resolution has taken place, and at least one Solicitor, will consider the matter on the papers. The panel will draft a recommendation for the other Manager, Legal Aid Grants.

#### Step Five

The Manager, Legal Aid Grants will make a final decision and notify the provider. There is no further right of review within this process.

#### **Legal aid for the legal aid granting and invoicing disputes resolution process**

Providers cannot claim payment for any activities associated with the granting and invoicing dispute resolution, as they are acting in their own right rather than providing legal services to an aided person or applicant.

# Legal aid debt

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The key sections of the Legal Services Act 2011 for setting conditions on a grant are:

- s 4 Interpretation – proceeds of proceedings
- s 18 Conditions on a grant of legal aid
- s 19 Special provisions about conditions on grants to persons involved in proceedings under Family Violence Act 2018
- s 20 Interim repayments payable
- s 21 Amount of repayment payable
- s 21(6) Amount of repayment payable [victims claims proceedings]
- s 26 Commissioner to keep aided person informed
- s 33 Amount payable by aided person to the Legal Services Commissioner (the Commissioner)
- s 34 Amounts payable under conditions of grant are debts due to the Commissioner
- s 36 Charge on proceeds of proceedings
- s 37 Commissioner may exempt a property from charge
- s 41 Deduction notices
- sch 1 Definition of income and disposable capital (including the definition of capital).

All grants of aid are subject to a condition that a repayment calculation be undertaken in accordance with s 18(2) and s 21 of the Legal Services Act 2011 (the Act). Some proceedings are exempt from an interim and/or final repayment.

The maximum repayment is limited by the prescribed repayment amount unless there are proceeds of proceedings. It will not exceed the total cost of services.

A repayment may be secured by requiring the aided person to authorise a registered charge over property and by the Commissioner registering a caveat on the property. It is subject to debt recovery measures if payments are in default and all proceeds of proceedings are subject to a charge in the Commissioner's favour. Interest will be charged on all outstanding finalised debts six months after closure of a case.

## Prescribed repayment amount

The key sections of the Legal Services Regulations 2011 for determining the prescribed repayment amount (PRA) are:

- Regulations 10 to 12
- Schedules 1 and 2.

The prescribed repayment amount (PRA) is based on gross household income, family size and capital. It is calculated at the time the application is made according to the maximum amount payable based on income and capital pursuant to schs 1 and 2 of the Legal Services Regulations 2011 (the Regulations). This is equivalent to the maximum repayment amount that would have to be paid unless there are proceeds of proceedings (family/civil only).

### The maximum amounts payable based on income and on capital

These are assessed only at the time the grant is first approved and not revised at a later date even if there has been a change in circumstances.

The key parts of the Regulations are:

- sch 1 Maximum amount payable based on capital (MAPC – table 1 & 2)
- sch 2 Maximum amount payable based on income (MAP – table 3).

The PRA is the sum of the MAPI and MAPC, the purpose of which is to set an upper limit for repayment. An interim or final repayment will not exceed the PRA unless both proceeds of proceedings and total cost of provider services exceed the PRA. If the PRA is zero and there are no proceeds of proceedings or the proceedings are exempt, then no final repayment will be required. If further information is requested and an interim grant is made the applicant will be informed that a condition may be required when the substantive grant is approved.

**Table 1 - Maximum amount payable based on income (with partner)**

Maximum amount payable by applicant with spouse or partner					
MAPI (annual)	No Children \$	1 Child \$	2 Children \$	3 Children \$	4+ Children \$
\$0	0 – 26,800	0 - 31,204	0 – 33,720	0 – 36,236	0 – 38,627
1,300	26,801 - 33,468	31,205 - 39,004	33,271 - 42,150	36,237 - 45,295	38,628 - 48,315
2,860	33,469 - 36,236	39,005 - 41,647	42,151 - 44,792	45,296 - 47,938	48,316 - 50,957
4,420	36,237 - 38,879	41,648 - 44,415	44,793 - 47,434	47,939 - 50,580	50,958 - 53,599
5,980	38,880 - 41,647	44,416 - 47,057	47,435 - 50,077	50,851 - 53,222	53,600 - 56,242
7,540	41,648 - 44,289	48,058 - 49,699	50,078 - 52,719	53,223 - 55,864	56,243 - 58,884
10,000	44,290 - 45,924	49,700 - 50,580	52,720 - 57,751	55,865 - 64,797	58,885 - 71,969

**Table 2 - Maximum amount payable based on income (single applicant)**

Maximum amount payable by single applicant					
MAPI (annual)	No Children \$	1 Child \$	2 Children \$	3 Children \$	4+ Children \$
\$0	0 – 16,734	0 – 31,078	0 – 33,720	0 – 36,236	0 – 38,627
1,300	16,735 - 20,886	31,709 - 38,879	33,721 - 42,024	36,237 - 45,170	38,628 - 48,189
2,860	20,887 - 23,277	38,880 - 39,759	42,025 - 42,905	45,171 – 45,924	48,190 - 49,070
4,420	19,981 – 21,924	34,129 – 34,884	36,829 – 37,476	42,925 – 46,805	49,071 – 49,825
5,980	21,925 – 23,976	34,885 – 35,532	37,477 – 38,232	46,806 – 47,560	49,826 – 50,706
7,540	23,278 - 25,542	39,760 - 40,640	42,906 - 43,660	47,561 – 48,441	50,707 – 51,461
10,000	25,543 - 27,932	40,641 - 41,395	43,661 - 44,540	48,442 – 57,751	51,462 – 64,797

**Table 3 - Maximum amount payable based on capital**

MAPC	Capital thresholds for single applicants without children \$	Capital thresholds for all other applicant \$
\$0	0 - 1,500	0 - 2,000
\$50	1,501 - 1,900	2,001 - 2,400
\$145	1,901 - 2,300	2,401 – 2,800
\$270	2,301 - 2,700	2,801 – 3,200
\$430	2,701 - 3,100	3,201 – 3,600
\$625	3,101 - 3,500	3,601 – 4,000
\$850	3,501 - 3,900	4,001 – 4,400
\$1,090	3,901 - 4,300	4,401 – 4,800
\$1,270	4,301 - 4,500	4,801 – 5,000

## Interim repayment amount

An interim repayment may be required pursuant to s 20 of the Act as part of the conditions on the grant. However, some matters may be exempt.

### Exemption from interim and final repayments

According to s 18(7) of the Act the following grants of legal aid are exempt from interim **and** final repayments:

- a grant to a proposed patient in proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (s 15(6)(b) of the Act)
- a grant to a proposed care recipient in proceedings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (s 15(6)(c) of the Act).

### Exempt from interim repayments

Under the Act the following grants of legal aid are exempt from interim repayments:

- grants under s 47 in respect of Waitangi Tribunal proceedings
- grants in respect of victims' claims proceedings under the Prisoners' and Victims' Claims Act 2005:
  - s 18(5)(a) prevents the Commissioner from imposing an interim repayment when aid is first granted
  - however, under s18 (5)(b) it is possible to set an interim repayment on an amendment to the grant but this will depend on special circumstances.

### Interim repayments not required

Generally, an interim repayment is not required for the following type of grants unless there are exceptional circumstances:

- criminal police prosecution (PAL1)
- LAT review
- respondent in a High Court Appeal against a LAT decision
- proceedings under s 23 of the Coroners Act 2006
- victims of crime in respect of proceedings under the Victims' Rights Act 2002
- victims of crime in respect of proceedings under the Parole Act 2002
- amendments of grant to victims of crime in respect of victims' claims proceedings under the Prisoners' and Victims' Claims Act 2005
- civil grants to minors or mentally disordered persons under s15 of the Legal Services Act 2011
- grants to persons who qualify as a s16 person
- in respect of proceedings under the following Acts in connection with proceedings under the Family Violence Act 2018:
  - the Care of Children Act 2005 or
  - the Oranga Tamariki Act 1989 or
  - the Family Proceedings Act 1980.

### Exemptions and family violence proceedings

If the original applicant in a family violence proceeding is applying for a protection order or defending an application to discharge an order under the Family Violence Act 2018, they will be exempt from a repayment.

However, if the legal aid application involves matters in addition to the Family Violence Act proceedings, then repayment may be required on the part of the grant that relates to those additional matters.

Repayment will not typically be required for additional matters under the Care of Children Act or Oranga Tamariki Act if they are held with the Family Violence Act proceedings.

However, if the additional matters later diverge from the Family Violence Act proceedings, and are dealt with separately by the court, repayment will be required.

Providers must advise us if the additional matters diverge from the Family Violence Act proceedings or are disposed of. Providers should include this information while invoicing, and identify which fixed fees, other activities or disbursements related to the additional matters were completed before the matters diverged or were disposed of. This will affect the client's repayment amount.

### **Application on behalf of a minor or mentally disordered person**

According to s 15(5) of the Act the Commissioner may waive the requirement for repayment by the person (representative) under whose name the proceedings are taken or defended.

#### **CIVIL MATTERS**

For civil/family matters the requirement for the parent to undertake repayment may be waived where the minor:

- is under 16 years of age and
- has a contrary interest with the parent or
- is living apart from the parent or
- is financially independent.

However, the requirement to undertake to pay may not be waived if:

- the parent/foster parent/stepparent/representative receives a sum under an agreement or court order for the purpose of maintaining the minor
- the minor is 16 years or over but under 20 years of age and there is a person under an agreement or court order liable to maintain the minor or there is a parent/foster parent/stepparent with whom the minor is living or the person receives a sum under an agreement or court order for the purposes of maintaining the minor.

#### **CRIMINAL MATTERS**

For criminal matters where the minor is 16 years or over then the requirement for the parent to undertake repayment may be waived. However, the requirement to undertake to pay may not be waived if:

- the minor is under 16 years
- the minor is 16 years or over and is receiving significant support from the parent.

### **Mentally disordered**

If the representative is not responsible (financially or otherwise) for the mentally disordered person, then the requirement to pay may be waived.

However, the requirement to undertake to pay may not be waived if:

- the representative is liable to maintain the applicant under an agreement or court order
- there is any sum paid or payable to the representative under any agreement or court order for the purpose of maintaining the applicant.



### Interim repayment amount

The interim repayment amount (IRA) takes into consideration the total amount to be paid while the case is active, the cost of comparable cases and the circumstances of each case.

The four options used to determine the interim repayment amount are:

- the likely costs of comparable cases for that matter/proceeding or
- the MAPI portion of the applicant's prescribed repayment amount or
- a repayment amount related to the nature of the applicant's means or
- the provider's estimate of the total likely cost of the case.

The option usually chosen is the one with the lowest value and which does not exceed the PRA.

### Likely cost of comparable cases

The purpose of the following likely cost table is to set a realistic IRA, particularly in cases where MAPI is high.

Matter/Proceeding Type	Likely Cost
Summary offence – guilty plea	\$250
Other PC1 and PC2 (excluding serious fraud)	\$630
PC3, PC4 and serious fraud	\$6,000
Family – except Property and DV (respondent)	\$1,690
Family – Property	\$2,810
DV (respondent)	\$1,650
ACC and Employment	\$1,700
All other civil matters	\$4,360

### MAPI portion of prescribed repayment amount

The applicant's MAPI will usually be one of the figures in the table below.

Schedule 2, Maximum amount payable based on income					
\$1,300	\$2,860	\$4,420	\$5,980	\$7,540	\$10,000

### Provider's estimate

The provider may choose to submit an estimate of the cost of the case with the legal aid application. This will be taken into consideration when setting the IRA but will not exceed the applicant's MAPI or near cash capital.

### Nature of applicant's income and capital means

If it can be shown that the applicant will have difficulty paying the lowest IRA set based on likely case cost, MAPI or provider estimate then the Commissioner may set an amount less than any of these. If the applicant has near cash assets or a second property, then this will also be considered.

## Interim repayment plan

The plan is set by the Commissioner. It is based on the principle that the debt will be repaid from the applicant's income within five years of the approval or from the applicant's income/capital within seven years of the approval. Once the interim repayment is paid, no further interim repayment will be required until the matter is finalised.

Repayment will be based on income and required to commence as soon as possible after the approval. It will be based on a set amount of regular repayments. Repayments will be based on disposable capital when the applicant has access to cash assets, near-cash assets (such as shares) or property other than the home.

An instalment plan may therefore include a combination of regular payments and one-off lump sum payments. It would have to start within 23 working days of the approval. This will be monitored by Legal Aid Debt. It will consider the applicant's frequency of pay dates.

Consideration will be given to requests to amend/defer/temporarily halt payments. The applicant will need to demonstrate that they are unable to make the payments such as confirmation of weekly expenses or that they are in custody.

Only one repayment plan will be required at a time so an arrangement will be made with the debtor to begin payments on any remaining debt. If there is a default on the plan and a new plan has not been agreed to then the Commissioner will consider withdrawing family/civil legal aid. Other debt enforcement strategies will be undertaken for criminal legal aid.

## Final repayment

A final repayment will be set once the proceedings are finalised, or the legal aid file is closed. The amount will depend on the total cost of services that being the total claims paid to the lead provider including professional fees and disbursements.

It will exclude services rendered for exempt matters and any interim repayments made to date. It will include any proceeds of proceedings even if the applicant's PRA was zero. The final repayment amount may be recalculated after:

- a reconsideration or review or
- a late invoice is submitted by the provider or
- the final cost of services amount decreases in value or
- there is an update on the total interim repayments made to date or
- the proceeds of proceedings amount changes.

The applicant will not be advised of the final repayment where there are no costs of services. If the applicant is deceased, then the letter will be sent to the provider.

## Securing an interim/final repayment

An interim and/or final repayment can be secured by a statutory land charge, caveat or charge on an asset other than land, registered on the Personal Property Securities Register (PPSR) as part of the conditions of the grant under s 18(3) of the Act. This will depend on whether the applicant owns or part owns a house or other real estate. If the applicant has an equitable interest in the same, then

the provider will be required to register a notice of claim. An aided person cannot be required to authorise a charge over a property in a trust.

Authorisation is sought when the grant is first approved although the charge will only be registered once the final repayment amount is set. The authorisation letter will need to be sent directly to the Legal Aid Debt in Wellington (refer to the [Ministry of Justice website](#) for contact details). If it is not returned legal aid may be withdrawn.

Legal Aid Debt will decide whether a caveat needs to be registered at any time during the life of the grant. It protects the Commissioner's interest over the property by preventing any sale without prior consent. This is usually registered when the cost of services exceeds \$1,500.00 for civil/family cases and \$500 for criminal cases.

Other assets over which a charge may be registered include vehicles, boats, insurance, superannuation, share and investments.

### **Fees and disbursements relating to a charge**

The fee for a provider's time spent administering a security is managed by Legal Aid Debt and paid as a disbursement. The fee for a statutory land charge will then be added to the final charge amount. General office disbursements are included in the following flat fee rates.

The fee for...	is...
preparation of a statutory land charge and/or caveat including search and registration fees	\$78.26 (GST excl.)
preparation of any other security in conjunction with a charging agreement	set by Legal Aid Debt – please contact 0800 600 090

### **Proceeds of proceedings**

A charge over proceeds of proceedings is created in favour of the Commissioner pursuant to s 36 of the Act. Prior authorisation is not required; however, the applicant will be advised about this in their initial grant letter.

If proceeds of proceedings other than an award for costs are received before the end of the case, financial eligibility will be reassessed. Repayment will be sought immediately except where it is the applicant's home. In this case a repayment plan will be set up and the repayment amount will be secured by a charge over the home.

### **Interest**

Section 40 of the Legal Services Amendment Act 2013 (Amendment Act) allowed for interest to be charged on all finalised legal aid debts from 2 September 2013 until this was amended on 1 January 2023. From 1 January 2023, interest is no longer charged on finalised legal aid debts. Any interest charged prior to this date remains payable.

Interest may be considered for a write off if the debt meets the write off criteria under s 43 of the Act.

## Deduction notices

Deduction notices apply to all debts finalised after the introduction of the Amendment Act. They can be imposed against benefits, wages and bank accounts when debtors do not comply with the requirement to repay their legal aid debt.

Interest will continue to be charged on debt that have deduction notices imposed on them.

# Keep aided person and the Commissioner informed

## The key sections of the Act are:

- s 14 Application for grant of legal aid
- s 26 Commissioner to keep aided person informed

The initial grant letter will confirm the:

- prescribed repayment amount
- interim repayment amount and plan (if applicable)
- options to change the plan (if applicable)
- consequences of not paying
- repayment from proceeds of proceedings (if applicable)
- exemptions from repayment (if applicable)
- options to write off the repayment
- options for reconsideration and review.

If the applicant does not accept the conditions on a grant, they will still be liable for any debt incurred in the meantime. If the conditions on the grant are accepted, then the applicant and provider will be kept informed about any changes to the conditions and amendments to the grant.

Once the case is finalised the applicant will be informed of the final repayment amount and a new payment plan (if applicable).

The provider and applicant need to keep the Commissioner informed about any change in personal and/or financial circumstances. This includes a significant increase in income and/or capital or the start of a new relationship.

## Write offs

The key sections of the Act are:

- s 43 Commissioner may write off amounts payable

The applicant may apply to the Commissioner for a write off of all or part of the final repayment amount. A form 18 Application for Write off/Exemption can be downloaded from the [Ministry of Justice website](#). The fully completed and signed form should be sent directly to Legal Aid Debt.

The following criteria will be taken into consideration:

## Serious hardship

Serious hardship only refers to significant financial difficulties arising in the following circumstances:

- inability to meet minimum living expenses according to normal community standards which the applicant cannot live without
- costs of medical treatment of injury/illness to the applicant or applicant's dependant – evidence of medical reports and actual costs must be submitted
- serious illness or injury by the applicant or dependant reducing the ability to work or undertake normal activities without assistance.

## Enforcement costs likely to exceed debt

A write off may be considered where the debt is minimal, unsecured and no payments have been received for a lengthy period of time.

## Just and equitable

For legal aid purposes, this refers to what is right or fair and consistent with the law. The applicant's individual circumstances and what is right and fair in their situation will be considered. This will be in relation to the amount to be retained after the debt is paid, the applicant's conduct as well as that of the other party in the proceedings.

If the conduct of the other party resulted in the costs being greater than they should have been providers are expected to seek court costs. This allows the court to decide under s 45 of the Act which in turn will be considered under any write-off request (if applicable).

# Award of Costs

Section 45 of the Act:

- limits the liability of the aided person for costs
- establishes that there must be exceptional circumstances for costs to be ordered against a legally aided person
- sets out possible matters the court may consider in deciding to establish costs against a legally aided person
- provides that the court must specify the amount that it would have ordered as costs but for the limitations of liability
- sets out the approach to costs where the person is mentally disordered and has a next friend or guardian ad litem.

Section 46 of the Act:

- requires the Commissioner to consider, on request, payment of costs that would have been awarded were the person not legally aided
- sets out matters to be considered when considering a payment request
- provides for the Commissioner to recover from the legally aided person the amount it pays if an actual award of costs has been made under s 45 of the Act
- allows the Commissioner to pay a lawyer who is not a listed provider.

This applies to civil/family cases where there is:

- a court order for costs against the legally aided person
- the other party requests that the Commissioner pay the costs the court indicated would have been paid if the person had not been legally aided
- costs are awarded in favour of the legally aided person.

The application must be on the 'Payment of costs' or 'Deed of Assignment' form found on the [Ministry of Justice website](#). Providers will need to contact the local legal aid office for guidance around costs awarded prior to 1 March 2007.

An award of costs is usually made if the court determines there are exceptional circumstances, considering the conduct of the legally aided person.

The Commissioner will not pay more costs than that actually incurred by the party seeking payment. Also, if two aided parties are awarded costs, they cannot apply for payment of some or all of the difference – the correct recourse is to apply for a write-off.

If no costs order is made but an order specifying what it would have been if it had not been for s 45 of the Act then the payment does not become an automatic debt due by the Commissioner. The decision to pay is discretionary under s 46(6) of the Act.

If the payment is established as a debt this will be over and above any final repayment amount already due.

The following criteria will be taken into account:

- whether the matter is partly heard or an appeal is likely in which case the Commissioner will await the outcome before taking any further steps
- the conduct of the parties causing the proceedings to be protracted and difficult, expensive, time consuming and emotionally draining (note this may be further investigated by Provider Services)
- hardship if the costs were not paid such as future financial commitments and support.

If the application is approved payment will be made to the provider or the other party's lawyer.

## Glossary

Audit	means an enquiry to assess the quality and value of the services supplied by a provider, or which may be paid for by the Secretary.
Auditor	means a person employed or appointed by the Secretary for the purpose of conducting examinations and/or audits.
Authorisation	A signed letter from the applicant agreeing to the conditions on a grant and authorising a charge to be registered over their specified asset for payment of a further contribution and/or as proceeds of proceedings.
Capital	This is the total of the person's assets minus debts. This value is used for repayment assessments only.
Caveat	A legal document that is registered with Land Information New Zealand against a title of land and records the Commissioner's interest over the property.
Charge	A legal interest in an asset that is formally registered, such as with Land Information New Zealand in the case of land or the Personal Property Securities Register in the case of most other assets.
Deduction notice	A written notice requiring a third party to deduct legal aid repayments automatically from a person's wage, benefit, compensation or bank account. A deduction notice is a last resort action to recover debt.
Deed of Assignment / Deed of Subrogation	A legal document that substitutes one person for another so that the person substituted assumes the rights or penalties of the other. In legal aid processes this means a Court executed document that transfers the legal aid costs to a respondent. The respondent, rather than the legally aided person, must then repay the legal aid debt.
Disposable Capital	This is the total of the person's assets minus debts and minus the value of assets and allowances set out in cl 3 of sch 1 of the Legal Services Regulations 2011 (the Regulations). This value is used for eligibility assessments only.
Electronic signature	An electronic signature can be accepted where the provider's name or signature is handwritten or typed in the signature box and the document was sent electronically from the provider's recognised email address (either the provider's email address for legal aid matters or an email address recognised by the Legal Services Commissioner as belonging to the provider's firm).
Examination	An investigation into an invoice submitted by a lead provider to determine whether the claim is excessive or inaccurate.
Exceptional Circumstances	Describes any particular factor or combination of factors that is unusual, out of the ordinary, or uncommon in the facts of the case.
Excessive	In the context of an examination means a claim for payment that has been determined to be in excess of the standard rates of payment or experience with comparable claims.
Final repayment	The value of the repayment owed to the Ministry when the grant is finalised.
Hearing time	Payable in half-hourly blocks in conjunction with certain fixed fees. Refer to the relevant fixed fee schedules for further information.
Inaccurate	means a claim for payment based on an erroneous statement of facts such as hours or travel time and cost.
Interest	This was the daily fee charged on all outstanding legal aid debt six months from the date the case is finalised and set at the government capital charge rate. Interest is no longer charged from 1 January 2023.

Interim repayment	This is an amount paid to the Commissioner towards the cost of legal aid prior to the finalisation of the case and is included in the determination of the legally aided person's final repayment. The interim repayment amount may be set when a grant is first approved for the matter.
Interim repayment plan	This is an arrangement to pay the interim repayment. It may involve payment from income and/or disposable capital. It can be varied in the course of the grant.
Maximum amount payable based on capital (MAPC)	This is the maximum value that an aided person may be expected to pay from their assets as a repayment. It is set when the grant is first approved and the amount is calculated according to sch 1 of the Regulations.
Maximum amount payable based on income (MAPI)	This is the maximum value that an aided person may be expected to pay from income as a repayment. It is set when the grant is first approved and the amount is calculated according to sch 2 Table 1 of the Regulations.
Memorandum of consent	A memorandum in writing (usually signed by the parties and their counsel) agreeing that orders can be made by consent, e.g. day-to-day care and contact, relationship property or paternity. If the Judge considers those orders appropriate, this may conclude a proceeding, or part of a proceeding
Memorandum of Priority	A legal document used to vary the priority of mortgages (priority order of debts owed) on a security document (such as a land title) or to increase the value of an existing priority.
Prescribed repayment amount (PRA)	This is the sum of the MAPI and MAPC. It is the maximum amount the aided person might have to repay once the final repayment is calculated. This figure is set when a grant is first approved and is not changed during the life of the grant.
Proceeds of Proceedings	In relation to civil/family proceedings (excluding Waitangi) for which legal aid has been granted, means: <ul style="list-style-type: none"> <li>• any money or property which the aided person is entitled to recover or retain, under a judgment, an out-of-court settlement or order given in judicial proceedings, and</li> <li>• any costs awarded or payable to the aided person under a judgment, out-of-court settlement or order given in judicial proceedings.</li> </ul>
Repayment	The repayment is a debt due to the Ministry calculated in accordance with s 18 of the Act. The value of the repayment is the repayment payable.
Statutory Land Charge	A legal document securing the Ministry's interest (priority) against the title of land in the event of a default of repayment. It is registered with Land Information New Zealand. It prevents the sale of the land without the Ministry's consent.
Substantially progressed	A case must meet this threshold before payment of an interim fee or termination of assignment fee can be claimed. A case is considered to have been substantially progressed when disclosure has occurred, even if the stage/fee has not been completed, for reasons outside of the provider's control.



# Useful resources

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You will be able to click through to useful documents and forms via this [web page](#). This link will take you to:

- the legal aid fixed fees schedules and proceeding steps
- application forms and invoice forms
- operational policies
- the provider grants handbook
- information on the legal aid quality framework
- read news for legal aid providers.

## Legislation

- Legal Services Act 2011
- Legal Services Regulations 2011
- Legal Services (Quality Assurance) Regulations 2011.