

# Amendment to Grant Forms & High Cost Criminal Cases

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## Submissions and decisions

March 2019



*Legal Aid Services*

New Zealand Government

# Foreword

Thank you to everyone who engaged with the review on the amendment to grant forms and high cost criminal cases policy.

Your contributions have helped us to determine the best way to ensure that our amendment to grant forms and the high cost criminal case policies are fit for purpose and work well for you and our customers. The number of submissions was limited, however regardless of that, we have considered each of the submissions based on their merit.

Overall, your feedback told me that you fully support simplifying the forms and reducing their number. You helped us clarify some of the language and suggested we be more specific about the information we need to approve a request.

A great many of you commented on the duplication of purpose between the amendment to grant form and the high cost case plan. This feedback strongly supported our proposal to remove the high cost case plan.

This document gives a summary of your feedback and helps to give context around why we have made the changes. I am confident that you will be pleased with the amendment to grant forms and the high cost cases policies, and the benefits that will come with them.

Thank you for your ongoing commitment to our customers.

**Brett Dooley**

**Group Manager, National Service Delivery**

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# Introduction

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The purpose of legal aid is to promote access to justice by providing legal services to people of insufficient means in an effective and efficient manner. To support the efficiency of service delivery and the responsible administration of public funds, the Legal Services Commissioner sets a maximum grant. To increase the maximum grant requires an application to amend the grant.

Similarly, the high cost cases policy is intended to ensure that the substantial amount of legal aid required for some of the most serious criminal cases is used effectively and efficiently.

This document sets out how we undertook the review and summarises the key feedback that helped inform the revised amendment to grant forms and the high cost cases policy.

## Process

A small project team was set up and a select group of Legal Aid Services experts reviewed the amendment to grant forms and the high cost cases policy. Changes to the amendment to grant forms were proposed that reduced the number of forms from 11 across four jurisdictions down to three. We proposed one form for criminal, a combined form for family and civil and one (unchanged) form for Waitangi. We proposed changes to the high cost cases policy that simplified the criteria for including a case in the ambit of the policy, our documentary requirements and management of high cost cases.

In December 2018 to January 2019, we sought your feedback on the proposals via the consultation page “Have Your Say” on the Ministry website.

Should you have any further questions, contact information is available at the end of this document.

# Summary of decisions

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## Your comments

Your feedback on the amendment to grant forms strongly supported simplifying the forms and reducing their number. In particular, a significant proportion of your comments highlighted duplication of information required in the high cost case plan and in the criminal amendment to grant form. There were a number of comments suggesting clarifications in the language used in the amendment to grant forms. There was also a suggestion that the forms need to specify more clearly the information necessary to justify an amendment to grant request.

Comments about the high cost cases policy strongly supported dispensing with the high cost case plan and expert request forms. There were comments that questioned proposed changes to the criteria for recognising a case as high cost and how discretionary inclusion will work. There were also comments about funding for printing disclosure.

## Our responses

In response to your feedback, we have:

- used language in the criminal amendment to grant form that more accurately reflects criminal procedure
- included more specific guidance in the amendment to grant forms on the information required to justify an amendment to grant
- removed the restriction on how discretionary inclusion in the high cost cases policy works.

The changes should ensure that applications for amendments to grant are easier to complete and your administrative burden for high cost cases is reduced and simplified. The new forms and policies will apply from 1 April 2019.

# Key feedback from you, and our responses

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The table below provides key feedback from you regarding improvements to the amendment to grant forms and high cost cases policy.

Your comments	Our responses
<b><i>Amendment to Grant Forms</i></b>	
<p>Have one form which combines fixed fee invoice, fixed fee plus invoice and the amendment to grant form.</p>	<p>We are reviewing the invoice forms and considering combining the fixed fee and fixed fee plus invoice forms. The amendment to grant form will remain separate because, so far as practicable, requests to amend a grant are made before the work is done.</p>
<p>The term defended hearings is used. It should read judge-alone trial.</p>	<p>We agree. We have updated this language.</p>
<p>It is not clear what "Trial/Jury trial set down for more than three days" refers to. Perhaps better to just refer to "Jury Trials".</p> <p>Jury trials in Auckland are not set down for a number of days, they are simply set down after both parties indicate the expected duration of their cases.</p>	<p>A jury trial of more than three days demonstrates significant additional work outside the fixed fee funding.</p> <p>If providers are confident the trial will be more than three days, they can tick this criterion. If providers are not sure, they can include this in their explanation.</p>
<p>Why are the customer specific and specialist report criteria not under family too?</p>	<p>The customer specific and specialist report criteria are available under family and civil. We have adjusted the formatting to make this clear.</p>
<p>Please make sure that all legal aid forms are in WORD format for ease of use and saving.</p>	<p>The amendment to grants forms will be in WORD format.</p>
<p>Why does the type of proceeding and forum need to be entered? This will already be on the existing application.</p>	<p>Customers may be seeking to add a proceeding to a grant. Including this</p>

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	information on the form also helps to speed our processing.
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The information required in the explanation is not specified.

We agree. We have added additional guidance in the form.

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<b>Your comments</b>	<b>Our responses</b>
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<b><i>High cost cases (HCC) section of the criminal amendment to grant form</i></b>	
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It seems unnecessary to include the amendment to grant form with the HCC case plan when they contain the same information.

We agree. Our proposal included removing the HCC case plan.

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"Format of Disclosure" and "Volume" don't make sense as separate columns. Perhaps simply add to 'Description of Activity'. With reference to disclosure, please indicate whether format was transcript/DVD/electronic.

The column headings may not be applicable in all cases but in our view the suggestion would increase risk of not obtaining the required information. This may result in correspondence on the request which we want to minimize.

'Date' may not be particularly helpful as some tasks are performed over many days whenever time is available.

Agreed, this has been removed.

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Not convinced that 'Key Aspects' will be particularly helpful to assess the request. Suggest a rather more open-ended question, namely 'How is it proposed to spend the additional hours'?

We reviewed the purpose of this panel.

We concluded that it duplicates the justification for the work to be done that is part of the explanation on page 2. We decided to remove it.

We agree that the question should be more open-ended and have used 'how the hours will be used' in the 'Explanation' in place of 'the work to be done'.

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The initial 40 hours which usually takes up to the case review hearing, I believe it is unnecessary to describe each activity that is done to substantiate 40 hours initially granted. This is because you cannot record everything that is undertaken and usually it takes more

A fair accounting for the 40 hours is essential for assessing the reasonableness of any subsequent funding request.

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than 40 hours on most of the cases under the High Cost Case Management assignment. It is wasting our time writing it all out.

Your comments	Our responses
<i>High cost cases policies</i>	
<p>'Discretionary inclusion' amendment not justified. It will achieve very little other than encourage counsel to go big as early as possible. The situation is not always clear at the outset and as a matter progress, it can become extremely complex. No provision is made, for instance, for additional charges and their effect. Recommend no change as it leaves a discretion intact.</p>	<p>We agree. Limiting discretionary inclusion after a 2nd amendment to grant is arbitrary and would impact differently depending on the progress of the individual case. We have decided to leave the discretion open-ended. We will train staff in applying the discretion.</p>
<p>Removing the requirement for Form 50 is a good idea. Practitioners often forget to complete them, and it is complicated by the fact that the actual form is only available on the website.</p>	<p>We agree. We will remove the requirement for this form.</p>
<p>Where there are multiple Class A charges whether or not it is part of an operation there needs to be access to HCC at an appropriate threshold.</p>	<p>Class A drug trials will be included on a discretionary basis as indicated by the facts and circumstances of the case. This will be addressed in training.</p>
<p>Serious fraud cases do not always make it to the Serious Fraud Office and prosecutions by the FMA do not always constitute serious fraud. Recommend that the wording of the current item be left unchanged as it will allow for discretion to be exercised.</p>	<p>The proposed policy will allow for discretionary inclusion depending on information supplied. If we remove the Serious Fraud Office and Financial Markets Authority criteria the grants officer will be expected to assess the seriousness of all fraud cases. Often, they will not have sufficient information for this assessment.</p>

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Pages of disclosure are hard to count when a lot of the disclosure is now for via DVD which then gets transferred to a drop box under the client's name. We usually do not have time to count the individual pages. All we can do is do a rough estimate. This is also time-consuming counting pages.

We don't expect providers to count pages. A fair estimate is acceptable. We will indicate this on the form.

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There should be no limit on printing disclosure. We should be able to identify the amount spent on printing and be reimbursed for this. Printing is a significant cost for our firm which is invariably not met. The fixed fee or, where an amendment has been granted, hourly rate simply does not cover these costs.

We have lifted the pre-approved limit for printing disclosure from 200 to 5,000 pages. This will accommodate most cases and in our view is reasonable.

# Implementation dates

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A copy of the revised amendment to grant forms are included for your reference below. The new forms and policies will apply from 1 April 2019. Prior to that date, the WORD template forms will be re-published for you to download and a fact-sheet will be available to help you become more familiar with the changes.

## Questions

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If you have any questions about the changes outlined in this document, you can contact the National Service Delivery Operations Support team.

*By email:* [NSDOpsSupport@justice.govt.nz](mailto:NSDOpsSupport@justice.govt.nz)

Or the Group Manager, National Service Delivery

*In writing:*

Group Manager, National Service Delivery

DX: SX10125

Wellington



# Amendment to Grant Forms



03/19 form **51**  
**Amendment to Grant Criminal Legal Aid**

Legal aid file no.

Lead provider's matter ref.

Customer \_\_\_\_\_ Provider \_\_\_\_\_

Court \_\_\_\_\_

**Amendment Sought:**

- Replace fixed fee       High Cost Case       Additional work when fixed fee has been claimed
- Disbursements       Estimate

**Applicable fee schedule:**       A-C       D       E       F       G       H-I       J

Please tick the following criteria that is applicable to your case.

**Fixed fee criteria**

**Case specific (tick all that apply)**

- Volume/nature of disclosure       More than five charges being defended/Judge alone trial       Five or more witnesses       Co-defendants/accused
- Significant new points of law to be researched       Three or more prosecution interviews with defendant/witness       Judge-alone trial set for more than a full day (Schedule A-C)       Jury trial set down for more than three days (Schedule D-F)

**Customer specific**

- Vulnerable defendant/complainant       Defendant subject to treatment order(s).       Communication barriers

**Schedules G-J only**

- Cost of completing activities exceeds relevant fixed fee by more than 25%

**Other:**

- Any other special circumstances

**Funding sought**

Activities	Lead Provider		Listed Provider B	
	Hours	Total fees	Hours	Total fees
Provider name or number				
Level of experience	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3		<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> SUP	
Provider rate (excl. GST)	\$ <input type="text"/>		\$ <input type="text"/>	





Status of case

Has the matter been disposed of by a court, tribunal or any other means?

No

Yes

Date of final disposition

Please outline reasons for delay in submitting this amendment. Please note that requests received **more than 15 working days** following disposal of the case cannot be considered (refer to section 28 of the Legal Services Act 2011)

Lead provider

I confirm that:

- I have informed the customer of this amendment to the grant and explained why it is necessary.
- I have explained to the customer that this amendment may increase their repayments (if any).
- I have informed Legal Aid of any changes to the address, or any increase in the income or disposable capital of the customer.
- I will not claim a fixed fee for any activities that are approved in this amendment.



Legal Aid

03/19 form 52

# Amendment to Grant Family Legal Aid Civil Legal Aid

Legal aid file no.

Lead provider's ref.

Customer \_\_\_\_\_ Provider \_\_\_\_\_

Type of proceeding \_\_\_\_\_ Court/Tribunal \_\_\_\_\_

### Amendment sought

- Replace fixed fee       Estimate       Additional work when fixed fee has been claimed
- Disbursements       Non-Fixed fee (*go to funding sought*)

Please tick the following criteria that is specific to your case.

#### Family criteria

- Alienation/deprivation factors       Allegations/instances of sexual/substance/physical abuse       Multiple parties (3 or more)
- Multiple children in different circumstances       Multiple witnesses (excluding Applicant and Respondent)       Other special circumstances (*provide more detail in explanation section*)

#### Civil criteria

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

#### Customer specific

- Customer has mental illness/intellectual disability       Communication barriers       The severity of injury/injuries has resulted in permanent impairment (ACC)

#### Other

- Other special circumstances (*provide more detail in explanation section*)

#### Funding sought

Activities	Lead Provider		Listed Provider B															
	Hours	Total fees	Hours	Total fees														
Provider name or number																		
Level of experience	<table border="1"> <tr><td>1</td><td>2</td><td>3</td></tr> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> </table>		1	2	3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<table border="1"> <tr><td>1</td><td>2</td><td>3</td><td>SUP</td></tr> <tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr> </table>		1	2	3	SUP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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1	2	3	SUP															
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>															
Provider rate (excl. GST)	\$ _____		\$ _____															



Status of case

Has the matter been disposed of by a court, tribunal or any other means?

No

Yes

Date of final disposition

Please outline reasons for delay in submitting this amendment. Please note that requests received **more than 15 working days** following disposal of the case cannot be considered (refer to section 28 of the Legal Services Act 2011)

Lead provider

I confirm that:

- I have informed the customer of this amendment to the grant and explained why it is necessary.
- I have explained to the customer that this amendment may increase their repayments (if any).
- I have informed Legal Aid of any changes to the address, or any increase in the income or disposable capital of the customer.
- I have informed Legal Aid of any settlement offers in this matter.
- I will not claim a fixed fee for any activities that are approved in this amendment.