



# **LEGAL AID TRIBUNAL**

## **PRACTICE NOTE**

September 2011

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## **PREAMBLE**

The Practice Note is issued pursuant to section 65(2)(b) of the Legal Services Act 2011 (“the Act”). It is effective for all review applications.

The following information on the practice and procedure adopted by the Legal Aid Tribunal (“the Tribunal”) is designed to provide guidance to applicants and their representatives. The Tribunal expects compliance with the procedures set out.

The practice and procedure of the Tribunal is subject to the Act and Legal Services Regulations 2011 (“the Regulations”) and any other Regulations made under the Act.

## **PRELIMINARY MATTERS**

### **1. JURISDICTION**

[1.1] The Tribunal is an independent, specialist judicial body established under section 62 of the Act.

[1.2] The functions of the Tribunal are:

- (i) to determine applications for review of the reconsideration of certain decisions of the Legal Services Commissioner (“Commissioner”) (ss 52(1),63(a));
- (ii) to determine applications for review of decisions of the Commissioner for payment of costs of a successful opponent against an aided person (ss 52(3),63(a));
- (iii) to determine applications for review of decisions relating to the amount payable to a provider or former listed provider in respect of services provided before 1 July 2011 (ss 63(b), 130);
- (iv) to determine reviews of any other decisions it has jurisdiction to review (s 63(b)).

[1.3] The Act sets out those reconsidered decisions which may be reviewed (s 52(2)):

(2) The decisions that may be reviewed are decisions that affect the applicant for review, and relate to any 1 or more of the following:

- (a) an application for legal aid:
- (b) any conditions imposed under section 18 or 47 on a grant of legal aid:
- (c) any amount payable by an aided person, whether as an interim repayment or a repayment, under a grant of legal aid:
- (d) the maximum grant under a grant of legal aid:
- (e) the withdrawal of, or amendment to, a grant of legal aid:
- (f) the enforcement of any condition imposed under section 18 or 47 on a grant of legal aid:
- (g) any changes to, or dealings with, a change on property arising out of a grant of legal aid.

[1.4] The grounds on which an application for review may be brought are that the decision of the Commissioner is manifestly unreasonable and/or wrong in law (s 52(1) & (3)).

[1.5] A decision is manifestly unreasonable where it is shown, “clearly and unmistakably, that the decision made by the [Commissioner] went beyond what was reasonable or was irrational or logically flawed.” A decision may be wrong in law “if it derives from an incorrect application or interpretation of the statute; or if it is wrong in principle; or if the decision-maker has failed to take into account some relevant matter; or has taken account of an irrelevant matter; or if it depends upon findings which are unsupported by the evidence”. *Legal Services Agency v Fainu* (2002) 17 PRNZ 433 at [27]–[28]. Manifestly unreasonable requires “not only that the decision be found to be unreasonable, but that [the Tribunal] forms the view that the decision is so clearly unreasonable that the intervention of the [Tribunal] is called for;” *Legal Services Agency v A* (2003) 17 PRNZ 443 at [11] (c).

[1.6] The threshold for intervention by the Tribunal is a high one; *Legal Services Agency v W* HC Wellington CIV 2009-485-2191, 21 April 2010 at [17], [58].

[1.7] In determining any application, the Tribunal may confirm, modify, or reverse the decision under review, or direct the Commissioner to reconsider part or all of it (ss 56(1), 57(1)).

#### **NOTICE OF APPLICATION**

[2.1] An application must be made within 20 working days after the date on which notice of the relevant decision is given to the applicant (s 53(1)).

[2.2] The notice of application by an aided person or an applicant for legal aid must be on the approved Form 1 (s 53(1)). The form is obtainable from the Tribunal and downloadable from [www.justice.govt.nz/tribunals/lat](http://www.justice.govt.nz/tribunals/lat). It must be completed in English on line or filed in the office of the Tribunal in Wellington:

Legal Aid Tribunal  
Tribunals Unit  
Level 1  
86 Customhouse Quay  
WELLINGTON

Private Bag 32-001  
Panama Street  
WELLINGTON 6146

Email: [tribunals@justice.govt.nz](mailto:tribunals@justice.govt.nz)

Fax: 04 462 6686

[2.3] The applicant must provide a current home address in New Zealand (not a post office box number). This is the address to which communications relating to the application will be sent, unless the applicant has a representative who provides an address and agrees to accept communications on the applicant's behalf.

[2.4] The Tribunal must be kept informed of any change of home address or address for communications. The Tribunal is entitled to rely on the most recent address for communications provided to it.

[2.5] A notice of application should be accompanied by a copy of the following:

- (i) the Commissioner's original decision;
- (ii) the Commissioner's reconsideration (if any);
- (iii) relevant correspondence, submissions and other documents supporting the application.

### **3. LATE APPLICATION**

[3.1] An applicant for review may apply to the Chair of the Tribunal to extend the time for filing the application, if exceptional circumstances prevented the application from being made within the required 20 working days (s 53(2)). The application to extend time must be made within three months after the date on which notice of the relevant decision was given.

[3.2] Such an applicant must complete Part 3 of the application for review (Form 1), setting out the exceptional circumstances, the period of delay, the reasons for the delay, the merits of the substantive application for legal aid, and the consequences to the applicant if the late application is not accepted. If the applicant made a late application for reconsideration of the Commissioner's original decision, the reasons for that late application must be disclosed to the Tribunal (s 53(3)).

### **4. REPRESENTATION**

[4.1] Any applicant may represent themselves or be represented by a lawyer or other person, either at their own expense or, if they so qualify, on legal aid.

[4.2] A minor aged 16 or over may apply for review in respect of a civil matter in his or her own right in the circumstances set out in section 15(1) of the Act.

[4.3] An application for review in respect of a civil matter by a person who is aged under 16 must be made by a person of full age (20 or over) and capacity (s 15(2)). Such an application must be made by either of the

person's parents, or the person's guardian, or a person providing day-to-day care or custody of the person (cl.16, Regulations).

[4.4] An application for review in respect of a civil matter by a person who is mentally disordered must be made by a person of full age (20 or over) and capacity (s 15(2)). An application in respect of a civil matter for a person who, by reason of mental or physical infirmity is incapable of completing an application may be made by any responsible person (including an officer of the Public Trust) with sufficient knowledge of the applicant's affairs (cl.17, Regulations).

[4.5] An application by a person who is not resident in New Zealand may be made by the applicant's lawyer or other person authorised by the applicant. A person signing on behalf of a non-resident applicant must state in the application that the applicant has not signed it personally because he or she is not in New Zealand (cl.18, Regulations).

[4.6] If the rules of court require civil proceedings to be brought or defended by a next friend or guardian *ad litem*, then the application for such a person must be made by the person's next friend or guardian *ad litem* or a person intending to act in that capacity (s 15(3)).

[4.7] The Chair of the Tribunal may waive the requirements of sections 15(2) and (3) of the Act (s 15(5)).

## **5. PROVISION OF INFORMATION**

[5.1] It is the responsibility of an applicant to establish his or her case and to ensure that all evidence and submissions are provided to the Tribunal before it makes its decision.

[5.2] All written evidence and submissions which are not in the English language must be accompanied by an accurate translation by a suitably qualified independent translator at the party's expense.

[5.3] The Tribunal does not require representatives to provide copies of its own precedent decisions or New Zealand court authorities on

established jurisprudence, which are to be relied on by the party. It does require one copy of foreign court decisions and New Zealand court authorities on novel points of law.

[5.4] The Tribunal requires copy documents only. If it requires the inspection of an original document, it will do so by notice in writing.

[5.5] Any person who has provided original documents to the Tribunal may request their return. Such requests will be considered after the Tribunal's decision is delivered and the time limited for appeal or judicial review has expired.

[5.6] The Tribunal will provide a copy of the application for review, the submissions and all supporting materials to the Commissioner (s 54(c)). The Commissioner is to file submissions and relevant documents held by the Commissioner within 14 days or such other period as the Tribunal allows (ss 54(a), 55(2)(a)).

[5.7] A copy of the submissions and documents provided to the Tribunal by the Commissioner will be sent to the applicant, who is to respond within 7 days or such other period as the Tribunal allows.

## **6. WITHDRAWAL**

[6.1] An applicant can withdraw an application at any time before a decision has been issued by completing the approved form (Form 2) and filing with the Tribunal.

## **CONDUCTING THE REVIEW**

### **7. ON THE PAPERS**

[7.1] The Tribunal conducts the review on the papers, with all reasonable speed (s 55(4)).



## **8. FURTHER INFORMATION**

[8.1] The Tribunal may seek from the Commissioner or any other person and may receive from any person any submission, document or information relating to the review (ss 54(a), 55(2)(a) & (3)).

[8.2] The Tribunal may seek a report from the Commissioner setting out the considerations to which the Commissioner had regard in making the original decision and when reconsidering it (s 55(2)(b)).

## **THE DECISION**

### **9. DELIVERY OF REASONED DECISIONS**

[9.1] Every decision of the Tribunal must be given in writing and contain a brief summary of the reasons (s 56(2)). It will be delivered to the applicant through his or her representative (if any) and to the Commissioner.

### **10. PUBLICATION**

[10.1] Decisions of the Tribunal are normally publicly available unless the Chair determines otherwise, either of his or her own volition or on application by any party, in relation to the whole or any part of a decision (s 58). Decisions publicly available will be anonymised so that the name of the applicant and those connected with the applicant, together with personal identifiers, are removed from the decision.

## **TRANSITIONAL MATTERS**

### **11. APPLICABILITY TO TRANSITIONAL APPLICATIONS**

[11.1] Notwithstanding the above provisions, transitional applications subject to sections 126 to 132 of the Act, will be dealt with in accordance with those sections. The above provisions of the Practice Note only apply to the extent they are not inconsistent with those sections, the Legal Services Act 2000 and the Legal Services Regulations 2006.

[11.2] Applications for review by providers or former listed providers of a decision relating to the amount payable in respect of any services provided before 1 July 2011, pursuant to section 130 of the Act, shall be made on the approved form (Form 3) and be filed in accordance with section 2 of this Note.

**DATED** this 5<sup>th</sup> day of September 2011

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D J Plunkett  
Chair  
Legal Aid Tribunal