

**Hon Kiri Allan**  
Minister of Justice

**Proactive release – Legal Services Amendment Regulations 2022; Legal Services Amendment Bill 2022: Approval for Introduction**

Date of issue: 15 December 2022

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1	<b>Legal Services Amendment Regulations 2022; Legal Services Amendment Bill 2022: Approval for Introduction</b> <i>Cabinet paper</i> Ministry of Justice Lodged 3 November 2022	Redactions under 9(2)(h)
2	<b>Cabinet Legislation Committee Minute of Decision</b> LEG minute Cabinet Office Meeting date: 10 November 2022	Redactions under 9(2)(h)
3	<b>Report of the Cabinet Legislation Committee: Period ended 11 November 2022</b> Cabinet Minute Cabinet Office Meeting date: 14 November 2022	Some out of scope material redacted
<b>Documents previously publicly released</b>		
4	<b>Departmental Disclosure Statement: Legal Services Amendment Bill</b> Departmental Disclosure Statement Ministry of Justice 3 November 2022	Available online at: <a href="https://disclosure.legislation.govt.nz/bill/government/2022/190">https://disclosure.legislation.govt.nz/bill/government/2022/190</a>
5	<b>Regulatory Impact Statement: Improving access to legal assistance for low income New Zealanders</b> Regulatory Impact Statement 10 June 2022	Available online at: <a href="https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-improving-access-legal-assistance-low-income-new-zealanders">https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-improving-access-legal-assistance-low-income-new-zealanders</a>

Office of the Minister of Justice

Cabinet Legislation Committee

**Legal Services Amendment Regulations 2022; Legal Services Amendment Bill 2022: Approval for Introduction**

**Proposal**

- 1 This paper seeks Cabinet agreement to:
  - 1.1 submit the Legal Services Amendment Regulations 2022 (the Amendment Regulations) to the Executive Council, and
  - 1.2 introduce the Legal Services Amendment Bill 2022 (the Bill) to the House.

**Policy**

- 2 Cabinet agreed on 27 June 2022 to:
  - 2.1 amend the Legal Services Regulations 2011 (the Regulations) to:
    - 2.1.1 increase the civil legal aid eligibility threshold by 15%,
    - 2.1.2 increase the legal aid repayment threshold by 16.5%,
    - 2.1.3 remove the user charge on civil legal aid,
    - 2.1.4 remove the interest charged on unpaid legal aid debt; and
  - 2.2 amend the Legal Services Act 2011 (the Act) to:
    - 2.2.1 repeal the provision that mandates the setting of a user charge,
    - 2.2.2 repeal the provision that mandates charging an interest on unpaid legal aid debt.
- 3 Amendments to the Regulations and the Bill will achieve the policy decisions previously made by Cabinet, to ensure legal aid is more accessible to low-income New Zealanders [SWC-22-MIN-0115]. These changes will improve access to justice by making more people eligible for legal aid and making repayments more equitable by reducing repayment requirements for low-income and vulnerable New Zealanders.
- 4 Budget 2022 contained an investment of over \$148.7 million across four years to support these changes and ensure continued access to justice for New Zealanders who cannot afford legal advice.

***Legal Services Amendment Regulations 2022***

- 5 It has been publicly announced that the regulatory changes will come into effect on 1 January 2023. Budget 2022 funding was also calculated to begin from this date.

*The eligibility thresholds will increase by 15% with an additional 1.9% increase for the next 3 years*

- 6 Eligibility for civil legal aid is determined, in part, by an applicant's income. The eligibility thresholds vary depending on whether an applicant has a partner and/or dependents.
- 7 The eligibility thresholds are set out in the Regulations. The Amendment Regulations will increase the current maximum levels of income by 15% on 1 January 2023 for applications granted during the period beginning with 1 January 2023 and ending with the close of 30 June 2023; and, by an additional 1.9% on 1 July 2023, 1 July 2024, and 1 July 2025.

*The repayment thresholds will increase by 16.5% with an additional 1.9% increase for the next 3 years*

- 8 Legal aid grants are loans that must be repaid. The recipient is not always expected to pay the entire amount of the cost of their legal assistance. The recipient pays back a specified amount which is determined by their income at the time that they applied for legal aid. This figure also varies depending on whether an applicant has a partner and/or dependents.
- 9 The maximum amounts payable on a legal aid grant (repayment thresholds) are set out in the Regulations. The Amendment Regulations will increase the current repayment thresholds by 16.5% on 1 January 2023 for debts established during the period beginning 1 January 2023 and ending with the close of 30 June 2023; and by an additional 1.9% on 1 July 2023, 1 July 2024 and 1 July 2025.

*The user charge is reduced to zero*

- 10 In June 2022, Cabinet agreed that the user charge should be removed. As an initial step, the user charge will be reduced from \$50 (inclusive of GST) to zero in the Amendment Regulations starting from 1 January 2023. User charges on legal aid granted before 1 January 2023 that are unpaid remain payable.
- 11 The principal provision in the Act that prescribes payment of the user charge will be repealed through the Amendment Bill. This is discussed further below.

*The interest on unpaid legal aid debt is reduced to zero*

- 12 The Regulations prescribe that interest is accrued on unpaid legal aid debt 6 months after the debt is finally determined. Interest on unpaid legal aid debt is currently 5% per annum, based on the current default public sector discount rate.

- 13 The Amendment Regulations will reduce the interest rate to zero. This is an initial step that will implement Cabinet's policy decisions in June 2022. This change will come into effect on 1 January 2023. Interest that accrued prior to 1 January 2023 remains payable.
- 14 The principal provision in the Act that requires payment of interest on unpaid legal aid debt will be repealed through the Amendment Bill. This is discussed further below.

### ***Legal Services Amendment Bill 2022***

- 15 The Act is amended to repeal provisions that require payment of a user charge and interest on unpaid legal aid debt. Cabinet previously agreed to this on 27 June 2022. Repealing these provisions give potential legal aid applicants enduring certainty around the cost of seeking legal assistance.

### **Impact analysis**

- 16 A regulatory impact assessment for the Legal Services Amendment Regulations and Legal Services Amendment Bill was prepared in accordance with the necessary requirements and considered by Cabinet on 27 June 2022.

### **Compliance**

- 17 The Regulations and the Bill comply with each of the following:
  - a. Principles of the Treaty of Waitangi;
  - b. Rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - c. Disclosure statement requirements;
  - d. Principles and guidelines set out in the Privacy Act 2020;
  - e. Relevant international standards and obligations; and
  - f. Legislation Design and Advisory Committee Legislation Guidelines (2021 edition).

### **Consultation**

- 18 The following agencies have been consulted in developing this Cabinet paper: Crown Law Office; Department of Corrections; Inland Revenue Department, Ministry of Business, Innovation and Employment – ACC, Government Centre for Dispute Resolution, and the Refugee Status Branch; Ministry of Education; Whaikaha- Ministry of Disabled People, Ministry of Social Development – Oranga Tamariki; Ministry for Pacific Peoples; Ministry for Women; New Zealand Police; Te Puni Kōkiri; and the Treasury.
- 19 The Department of the Prime Minister and Cabinet have been informed.

### **Timing and 28-day Rule**

- 20 I seek Cabinet authorisation to submit the Legal Services Amendment Regulations 2022 (attached as Appendix 1) to the Executive Council. I also propose that, subject to Executive Council agreement, the Regulations be published in the Gazette.
- 21 I recommend that the Amendment Regulations come into force on 1 January 2023. A waiver of the 28-day rule is not required.

### **Regulations Review Committee**

- 22 There are no apparent grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 23 Parliamentary Counsel has certified the Legal Services Amendment Regulations 2022 as being in order for submission to Cabinet.

### **Publicity**

- 24 The Amendment Regulations were announced as part of Budget 2022. They will be published in the *New Zealand Gazette* as soon as they have been made and the Ministry of Justice will also advise the legal profession.

### **Binding on the Crown**

- 25 The principal Act binds the Crown. I do not propose any amendments to this.

### **Creating new agencies or amending law relating to existing agencies**

- 26 This is not applicable.

### **Allocation of decision-making powers**

- 27 This is not applicable.

### **Associated regulations**

- 28 The Legal Services Amendment Regulations 2022 are discussed in paragraphs 5-15 of this paper.

### **Other Instruments**

- 29 This is not applicable.

### **Definition of Minister/department**

- 30 This is not applicable.

### **Commencement of legislation**

- 31 Once the draft Amendment Regulations have been approved by the Executive Council, the Amendment Regulations will be gazetted. The Amendment Regulations will come into force on 1 January 2023.
- 32 If agreed by Cabinet, the Bill can be introduced before the end of the year. I propose that it follows the standard legislative process and come into force on the day after receiving Royal Assent.

### **Parliamentary stages**

- 33 Subject to your agreement to the Bill, I recommend that it be introduced on the first sitting day after Cabinet agreement.
- 34 I recommend that the Bill be referred to the Justice Committee following first reading.

### **Proactive Release**

- 35 I will proactively release this paper, subject to any redactions as appropriate under the Official Information Act 1982, within 30 business days of decisions being confirmed by Cabinet or following introduction of the Bill, whichever is earlier.


## Recommendations

The Minister of Justice recommends that the Cabinet Legislation Committee

### *Legal Services Amendment Regulations 2022*

- 1 **note** that on 22 June 2022 the Cabinet Social Wellbeing Committee agreed to amend the Legal Services Regulations 2011 to [SWC-22-MIN-0115]:
  - 1.1 Remove the user charge for legal aid granted from 1 January 2023,
  - 1.2 Remove the interest rate on legal aid debts effective from 1 January 2023,
  - 1.3 Increase income eligibility thresholds for civil and family legal aid by 15% on 1 January 2023, then 1.9% p.a. thereafter, with the last increase on 1 July 2025, and
  - 1.4 Increase debt repayment thresholds by 16.5% for legal aid debt established from 1 January 2023, plus 1.9% p.a. thereafter, with the last increase on 1 July 2025.
- 2 **note** that the Legal Services Amendment Regulations 2022 will give effect to the decision referred to in paragraph 1 above;
- 3 **authorise** the submission to the Executive Council of the Legal Services Amendment Regulations.
- 4 **note** that the Legal Services Amendment Regulations 2022 will come into force on 1 January 2023.

### *Legal Services Amendment Bill*

- 5 **Section 9(2)(h)** 
- 6 **note** that on 22 June 2022 the Cabinet Social Wellbeing Committee agreed to repeal provisions in the Legal Services Act 2011, including:
  - 6.1 the provision in the Legal Services Act that mandates the setting of a user charge, and
  - 6.2 the provision in the Legal Services Act that mandates charging interest on repayment of legal aid debt.
- 7 **approve** the Legal Services Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives.
- 8 **agree** that the Bill be introduced in November 2022.
- 9 **agree** that the government propose that the Bill be:

**I N C O N F I D E N C E**

- 9.1 referred to the Justice Committee for consideration, and
- 9.2 enacted by 8 November 2023.

Authorised for lodgement

Hon Kiri Allan  
Minister of Justice

**I N C O N F I D E N C E**





# Cabinet Legislation Committee

## Minute of Decision

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*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

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### Legal Services Amendment Regulations 2022 and Legal Services Amendment Bill 2022: Approval for Introduction

Portfolio Justice

On 10 November 2022, the Cabinet Legislation Committee:

- 1 **noted** that in June 2022, the Cabinet Social Wellbeing Committee (SWC) agreed to amend the Legal Services Regulations 2011 to:
  - 1.1 remove the user charge for legal aid granted from 1 January 2023;
  - 1.2 remove the interest rate on legal aid debts effective from 1 January 2023
  - 1.3 increase income eligibility thresholds for civil and family legal aid by 15% on 1 January 2023, then 1.9% p.a. thereafter, with the last increase on 1 July 2025, and;
  - 1.4 increase debt repayment thresholds by 16.5% for legal aid debt established from 1 January 2023, plus 1.9% p.a. thereafter, with the last increase on 1 July 2025;
- [SWC-22-MIN-0115]
- 2 **noted** that the Legal Services Amendment Regulations 2022 (the Regulations) give effect to the decision referred to in paragraph 1 above;
- 3 **authorised** the submission to the Executive Council of the Legal Services Amendment Regulations 2022 [PCO 24918/2.0];
- 4 **noted** that the Regulations come into force on 1 January 2023
- 5 **Section 9(2)(h)** [REDACTED]
- 6 **noted** that in June 2022, SWC agreed to repeal provisions in the Legal Services Act 2011, including:
  - 6.1 the provision in the Act that mandates the setting of a user charge, and;
  - 6.2 the provision in the Act that mandates charging interest on repayment of legal aid debt;
- 7 **noted** that the Bill gives effect to the decisions above;

- 8      **approved** the Legal Services Amendment Bill [PCO 22615/4.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 9      **agreed** that the Bill be introduced in November 2022;
- 10     **agreed** that the government propose that the Bill be:
- 10.1   referred to the Justice Committee for consideration, and;
- 10.2   enacted by 8 November 2023.

Rebecca Davies  
Committee Secretary

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**Present:**

Hon Megan Woods  
Hon Chris Hipkins (Chair)  
Hon Andrew Little  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Michael Wood  
Hon Kiri Allan  
Hon Dr David Clark  
Hon Priyanca Radhakrishnan  
Hon Kieran McAnulty  
Dr Duncan Webb, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG



# Cabinet

## Minute of Decision

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### **Report of the Cabinet Legislation Committee: Period Ended 11 November 2022**

On 14 November 2022, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 11 November 2022:

# Out of scope

# Out of scope

LEG-22-MIN-0191

**Legal Services Amendment Regulations 2022  
and Legal Services Amendment Bill 2022:  
Approval for Introduction**  
Portfolio: Justice

CONFIRMED

# Out of scope

Rachel Hayward  
Secretary of the Cabinet