

Legal Services Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Legal Services Act 2000 (the **Act**).

Victims of crime applying for legal aid in respect of parole board hearings and coronial inquests

The general provisions of the Act in respect of financial eligibility testing and repayment conditions are appropriate for the vast majority of cases. However, to reduce the stress on victims of crime, this Bill amends the Act to ensure that victims of crime attending a parole board hearing or coronial inquest are not subject to financial eligibility testing, and that any grants made do not have repayment conditions attached.

Decision not to recover legal aid debt

Legally aided persons may have individual circumstances which may result in it being inequitable for the Legal Services Agency to seek recovery of a legal aid debt. The Act enables the Legal Services Agency to write off legal aid debt in these circumstances but only at the end of any legal proceedings.

This Bill enables the Legal Services Agency to make the decision not to recover legal aid debt at any time during the process, which in effect treats the debt as written off. This will provide the Agency with

more flexible decision-making powers. It will also provide greater certainty to aided persons regarding any repayment obligations as early as possible.

Regulations

The Act is intended to be prescriptive and transparent, and provides a high level of detail in respect of the operation of the legal aid scheme. The Act currently provides for a number of exemptions from financial eligibility testing and repayment conditions. Adding to these exemptions currently requires an Act of Parliament. However, there may be unforeseen circumstances where a class of persons or proceedings should be exempt from financial eligibility testing or repayment conditions or both, and where a swift legislative response is required.

This Bill introduces a regulation-making power to enable the Governor-General, subject to specific conditions, by Order in Council to exempt particular classes of persons and proceedings from financial eligibility tests and repayment conditions so that changes can be made quickly. Regulations may only be made if the Minister is satisfied that the exemption is in the public interest, facilitates access to justice, or is just and equitable in the circumstances. The exercise of this power will also be subject to parliamentary scrutiny through the Regulations Review Committee.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that this Act comes into force 2 months after the date of Royal assent.

Clause 3 states that this Act amends the Legal Services Act 2000 (the **principal Act**).

Part 1

Amendments to principal Act

Clause 4 amends section 4 of the principal Act (which relates to interpretation) by inserting definitions of **offender** and **victim**. Those definitions are substantially the same as the definitions of victim and offender in section 4 of the Victims' Rights Act 2002.

Clause 5 amends section 9 of the principal Act, which contains criteria for the granting of legal aid in respect of civil matters. The amendment relates to section 9(8), which provides that certain provisions relating to financial eligibility (subsections (2) and (4)(a) and (b)) do not apply to victims' claims proceedings.

The effect of the amendment is to extend the application of section 9(8) to—

- applications for legal aid by a victim in respect of a coroner's inquest or a parole board hearing;
- applications for legal aid from a person or in respect of a proceeding of a class specified in regulations as exempted from the application of subsections (2) and (4)(a) and (b).

Clause 6 relates to section 15 of the principal Act, which requires every grant of legal aid to be subject to a repayment condition and provides for further conditions that may be imposed. Section 15(6) lists certain applications that are not subject to section 15. *Clause 6* amends section 15(6) by adding to that list the following applications:

- applications for legal aid by a victim in respect of a coroner's inquest or a parole board hearing;
- applications for legal aid from a person or in respect of a proceeding of a class specified in regulations as exempted from the application of section 15.

Clause 7 inserts *new section 36A* into the principal Act. *Section 36A* provides that the Agency may at any time decide not to recover a legal aid debt if—

- enforcement of the debt would cause serious hardship to the aided person;
- the cost of enforcing the debt is likely to exceed the amount of the debt that is likely to be repaid;
- the Agency considers that it would be just and equitable not to recover the debt.

If the Agency decides not to recover a legal aid debt, the debt must be treated as being written off.

Clause 8 amends section 113 of the principal Act, which authorises the making of regulations for the purposes specified in subsection (1) of that section. The amendment inserts *new paragraph (oa)* into subsection (1), which enables regulations to be made that exempt any

specified class or classes of person or proceeding from the application of—

- section 9(2) and (4)(a) and (b) (financial eligibility criteria);
- section 15 (conditions on a grant of legal aid).

New section 113(8) provides that before regulations can be made under *new subsection (1)(oa)*, the Minister must be satisfied that the proposed exemption is justified on 1 or more of the following grounds:

- the exemption is in the public interest;
- the exemption facilitates access to justice;
- the exemption is just and equitable in the circumstances.

Part 2

Transitional provisions

Clause 9 provides for transitional matters. The amendments made by this Act apply only to legal aid applications made on or after the date that this Act comes into force.

Hon Annette King

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Legal Services Amendment Act 2008.

2 Commencement

This Act comes into force 2 months after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Legal Services Act 2000.

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Part 1**Amendments to principal Act****4 Interpretation**

(1) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

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

“**victim**—

“(a) means—

“(i) a person against whom an offence is committed by another person; and 15

“(ii) a person who, through, or by means of, an offence committed by another person, suffers physical injury or loss of, or damage to, property; and

“(iii) a parent or legal guardian of a child, or of a young person, who falls within subparagraph (i) or (ii), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and 20

“(iv) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and 25 30

“(b) despite paragraph (a), if an offence is committed by a person, does not include another person charged (whether as a principal or party or accessory after the fact or otherwise) with the commission of, or convicted or found guilty of, or who pleads guilty to,— 35

“(i) that offence; or

“(ii) an offence relating to the same incident or series of incidents as that crime or offence”.

(2) Section 4 is amended by adding the following subsection:

“(4) For the purposes of the definitions of **offender** and **victim** in subsection (1), the terms **child**, **immediate family**, **incapable**, **offence**, and **young person** have the meanings given in section 4 of the Victims’ Rights Act 2002.”

5 When legal aid may be granted: civil matters

Section 9(8) is repealed and the following subsection substituted:

“(8) Subsections (2) and (4)(a) and (b) do not apply to—
 “(a) applications for legal aid in respect of victims’ claims proceedings; or
 “(b) applications for legal aid by a victim in respect of—
 “(i) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; or
 “(ii) a hearing of the New Zealand Parole Board concerning the offender; or
 “(c) applications for legal aid by a person of a class specified in regulations as exempted from the application of subsections (2) and (4)(a) and (b); or
 “(d) applications for legal aid in respect of a proceeding of a class specified in regulations as exempted from the application of subsections (2) and (4)(a) and (b).”

6 Conditions on grant of legal aid

Section 15(6) is amended by adding “; or” and also by adding the following paragraphs:

“(d) applications for legal aid by a victim in respect of—
 “(i) an inquest held by a coroner for the purposes of Part 3 of the Coroners Act 2006; or
 “(ii) a hearing of the New Zealand Parole Board concerning the offender; or
 “(e) applications for legal aid by a person of a class specified in regulations as exempted from the application of this section; or

“(f) applications for legal aid in respect of a proceeding of a class specified in regulations as exempted from the application of this section.”

7 New section 36A inserted

The following section is inserted after section 36: 5

“36A Agency may decide not to recover debt in certain circumstances

“(1) The Agency may decide not to recover any debt due to the Agency under a grant of legal aid if—

“(a) the enforcement of the debt would cause serious hardship to the aided person: 10

“(b) the cost to the Agency of enforcing the debt is likely to exceed the amount of the debt that is likely to be repaid:

“(c) the Agency considers that it would be just and equitable not to recover the debt. 15

“(2) The Agency may make a decision under **subsection (1)** at the time that legal aid is granted, or at any time after it is granted.

“(3) If the Agency decides under **subsection (1)** not to recover a debt,—

“(a) the debt must be treated as being written off for the purposes of section 37; and 20

“(b) section 37(2) to (5) apply accordingly.

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

8 Regulations 25

(1) Section 113(1) is amended by inserting the following paragraph after paragraph (o):

“(oa) exempting, in accordance with **subsection (8)**, any specified class or classes of person or proceeding from the application of— 30

“(i) section 9(2) and (4)(a) and (b):

“(ii) section 15:”.

(2) Section 113 is amended by adding the following subsection:

“(8) No regulations may be made for the purposes of **subsection (1)(oa)** unless the Minister is satisfied that the proposed exemption is justified on 1 or more of the following grounds: 35

- “(a) the proposed exemption is in the public interest:
“(b) the proposed exemption facilitates access to justice:
“(c) the proposed exemption is just and equitable in the circumstances.”

Part 2

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Transitional provisions

9 Transitional provisions

- (1) In this section, **commencement date** means the commencement date of the Legal Services Amendment Act **2008**.
- (2) The provisions of the Legal Services Amendment Act **2008** apply only to applications for legal aid made on or after the commencement date. 10
- (3) **Section 36A** of the principal Act (as inserted by **section 7** of the Legal Services Amendment Act **2008**) applies to grants of legal aid only if the application for legal aid to which the grant relates was made on or after the commencement date. 15