

## **Legal Services Amendment Bill**

Government Bill

As reported from the committee of the whole  
House

This bill was formerly part of the Legal Assistance Amendment Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- this bill comprising clauses 1 and 2, and Part 1
- Accident Compensation Amendment Bill comprising subpart 1AA of Part 2
- Care of Children Amendment Bill comprising subpart 1 of Part 2
- Child Support Amendment Bill (No 2) comprising subpart 2 of Part 2
- Family Proceedings Amendment Bill comprising subpart 5 of Part 2
- Property (Relationships) Amendment Bill comprising subpart 6 of Part 2.



**Legal Services Amendment Bill**

---

**Key to symbols used in reprinted bill**

**As reported from the committee of the whole  
House**

text inserted

~~text deleted~~

---



*Hon Judith Collins*

## **Legal Services Amendment Bill**

Government Bill

### **Contents**

	Page
1 Title	2
2 Commencement	2
3 Principal Act amended	3
4 Interpretation	3
5 Proceedings for which legal aid may be granted: criminal matters	4
7 When legal aid may be granted: civil matters	4
8 Decision on application for legal aid	5
9 New section 16A inserted	5
16A Use of automated electronic systems for certain grants of legal aid	5
9A Conditions on grant of legal aid	6
10 New section 18A inserted	7
18A User charge payable by aided person	7
11 Amount payable by aided person to Commissioner	7
11A Amounts payable under conditions of grant are debts due to Commissioner	8
12 New section 40 substituted	8
40 Interest on unpaid legal aid debt	8
12A New headings and sections 41A to 41J inserted	9
<i>Deduction notices</i>	
41A Interpretation	9
41B Deduction of overdue amounts	10
41C Issue of deduction notice to State sector employer	11
41D Discharge of obligation	11

41E	Deduction notices issued to banks	11
41F	Making of deductions	12
41G	Offences in relation to deduction notices	13
41H	Protected earnings	13
41I	Penalty for late deductions	14
41J	Notices given to third parties	15
<i>Decisions not to recover debt, write-offs, and refunds</i>		
13	Commissioner to refund excess payments	15
13A	Reconsideration	15
13B	Grounds for review	16
13C	Approval	16
14	Review Authority established	16
15	New sections 87A and 87B inserted	16
	87A Deputy Review Authority	16
	87B Scope of functions of Deputy Review Authority	17
16	Lead provider to claim for payment	18
17	Secretary to refer claim to Commissioner for decision	18
18	Cancellation	18
19	Regulations	19
19A	Service of notices, etc	20
22	Schedule 3 amended	20
23	Transitional provision	21
23AA	Liability for fee and expenses incurred in lodging prior caveats	22

. . . . .

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Legal Services Amendment Act **2013**.

**2 Commencement**

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions.

- (2) If any provision of this Act has not earlier been brought into force under **subsection (1)**, it comes into force on the day that is 1 year after the date on which this Act receives the Royal assent.

**3 Principal Act amended** 5  
This Part amends the Legal Services Act 2011.

**4 Interpretation**

- (2) The definition of **prescribed repayment amount** in section 4(1) is amended by omitting “sections 19(1) and 20” and substituting “sections 20(1) and 21”. 10

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

“**specified application** means an application for legal aid made—

“(a) under section 47 in respect of certain proceedings before the Waitangi Tribunal; or 15

“(b) by a patient or proposed patient in respect of proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

“(c) by a care recipient or proposed care recipient in respect of proceedings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or 20

“(d) in respect of proceedings under the Protection of Personal and Property Rights Act 1988; or

“(e) by a victim in respect of— 25

“(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 (other than one in a proceeding specified in **section 6(c)(i)**) that concerns an offender and is a hearing at which the victim may appear as of right or with the Board’s leave; or 30

“(iii) any victims’ claims proceedings; or

“(f) to enable—

“(i) a person to apply for a protection order under Part 2 of the Domestic Violence Act 1995, or an 35

order relating to property under Part 3 of that Act;  
or

“(ii) a person who has applied for an order described in **subparagraph (i)** to appeal, or respond to an appeal, against the determination of the person’s application; or 5

“(g) in respect of a proceeding under Part 2 or 3A of the Children, Young Persons, and Their Families Act 1989; or

“(h) in respect of a proceeding that is specified in section 7(1)(j) to (n) and that involves, or is connected with, the recognition of a person as a refugee or protected person 10

“**user charge** means the amount that aided persons are required to pay by **section 18A**”.

## 5 **Proceedings for which legal aid may be granted: criminal matters** 15

Section 6 is amended by repealing paragraph (c) and substituting the following paragraphs:

“(c) proceedings before the New Zealand Parole Board that— 20

“(i) are held under section 27, 65, or 107 of the Parole Act 2002 (which relate to postponement orders, recall orders, and orders under section 107 of that Act); or

“(ii) otherwise concern an offender who is entitled, under section 49(3)(c) of the Parole Act 2002, to be represented by counsel in the proceeding: 25

“(d) proceedings in the High Court on an application under section 68 of the Parole Act 2002 (which relates to appeals against postponement orders, section 107 orders, and final recall orders).” 30

## 7 **When legal aid may be granted: civil matters**

(1) Section 10 is amended by repealing subsection (2) and substituting the following subsections:

“(2) The Commissioner must refuse to grant legal aid to an applicant whose income or disposable capital exceeds the relevant ~~thresholds~~ maximum level prescribed in regulations, unless 35



the Commissioner is satisfied that there are special circumstances, having regard to—

- “(a) the likely cost of the proceedings to the applicant; and
- “(b) the applicant’s ability to fund the proceedings if legal aid is not granted.

5

“(2A) However, in the case of an application that comes within any of **paragraphs (b) to (d) and (f) to (h)** of the definition of specified application in section 4(1), it is sufficient, for the purposes of **subsection (2)**, if the Commissioner has regard to either **paragraph (a) or (b)** of that subsection.”

10

(2) Section 10 is amended by inserting the following subsection after subsection (3):

“(3A) The Commissioner may, unless the interests of justice require otherwise, refuse to grant legal aid to an applicant if—

- “(a) any amount payable by the applicant in respect of a repayment of a previous grant of legal aid is in arrears; and
- “(b) the application made by the applicant does not come within any of **paragraphs (b) to (d) and (f) to (h)** of the definition of specified application in section 4(1).”

15

20

(3) Section 10(6)(c) is repealed.

**8 Decision on application for legal aid**

Section 16 is amended by adding the following subsection:

“(5) This section is subject to **section 16A.**”

**9 New section 16A inserted**

25

The following section is inserted after section 16:

**“16A Use of automated electronic systems for certain grants of legal aid**

“(1) The Commissioner may use an automated electronic system to grant legal aid to a natural person if—

30

- “(a) the person requires the grant for proceedings in respect of an offence punishable by a maximum term of imprisonment of not less than 6 months; and
- “(b) neither the income nor the disposable capital of that person exceeds the relevant maximum level prescribed in the regulations.

35

- “(2) A grant made in the manner authorised by **subsection (1)** is, for the purposes of this Act, taken to have been made by the Commissioner.
- “(3) Where an error is made in a grant of legal aid made in the manner authorised by **subsection (1)**, the Commissioner may cancel or correct the grant. 5
- “(4) **Subsection (2)** is subject to **subsection (3)**.
- “(5) A grant made in the manner authorised by **subsection (1)** is not subject to any of the conditions referred to in section 18.
- “(6) Every grant made in the manner authorised by **subsection (1)** must state a maximum grant, which must be the amount prescribed under **subsection (7)**. 10
- “(7) The Commissioner may from time to time, by notice in the *Gazette*, specify the amount of the maximum grant for any grant made in the manner authorised by **subsection (1)**. 15
- “(8) A notice under **subsection (7)** is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.”

**9A Conditions on grant of legal aid** 20

Section 18 is amended by repealing subsection (7) and substituting the following subsection:

- “(7) This section does not apply to—
- “(a) applications for legal aid that come within any of **paragraphs (a) to (e)(ii)** of the definition of specified application in section 4(1); or 25
- “(b) applications for legal aid by a person of a class specified in regulations as exempted from the application of this section; or
- “(c) applications for legal aid in respect of a proceeding of a class specified in regulations as exempted from the application of this section; or 30
- “(ca) a grant made in the manner authorised by **section 16A(1)**; or
- “(d) applications for legal aid by a person who is charged with or convicted of a prescribed offence and to whom section 9(2) does not apply.” 35

**10 New section 18A inserted**

The following section is inserted after section 18:

**“18A User charge payable by aided person**

- “**(1)** Every grant of legal aid for a civil matter, other than a grant to which **subsection (4)** applies, is subject to the condition that the aided person pay a user charge of the prescribed amount to the lead provider. 5
- “**(2)** The condition relating to the user charge is satisfied once the user charge is paid and no further user charges are payable in respect of the grant to which the condition attaches. 10
- “**(3)** The lead provider is authorised to receive the user charge from, or on behalf of, the aided person and may—
  - “**(a)** decline to provide any services under the grant of legal aid until the user charge under **subsection (1)** is paid; or 15
  - “**(b)** if the user charge has not been paid but any services of that kind have been provided, recover the user charge from the aided person.
- “**(4)** This section does not apply to—
  - “**(a)** a grant of legal aid made on a specified application; or 20
  - “**(b)** an application for legal aid by a person of a class specified in regulations as exempted from the application of this section; or
  - “**(c)** an application for legal aid in respect of a proceeding of a class specified in regulations as exempted from the application of this section. 25
- “**(5)** A grant of legal aid is also within **subsection (4)** if it is made on an application for matters referred to in that subsection as well as for other matters.”

**11 Amount payable by aided person to Commissioner 30**

- (1) Section 33 is amended by omitting “under the conditions” and substituting “in respect”.
- (2) Section 33 is amended by adding “; and” and also by adding the following paragraphs:
  - “**(c)** any interest payable under **section 40** in accordance with regulations; and 35

“(d) the amount of any expense reasonably incurred by the Commissioner for the purpose of enforcing or securing a debt payable to the Commissioner by the aided person, but only if the expense is of a kind specified by the regulations for the purposes of this paragraph.” 5

**11A Amounts payable under conditions of grant are debts due to Commissioner**

- (1) The heading to section 34 is amended by omitting “**under conditions**” and substituting “**in respect**”.
- (2) Section 34 is amended by repealing subsections (1) and (2) and substituting the following subsection: 10
- “(1) An amount payable to the Commissioner as a condition of a grant of legal aid (whether as an interim repayment or a repayment) and any other amount payable to the Commissioner in respect of the grant may be recovered in any court or tribunal of competent jurisdiction as a debt due to the Commissioner.” 15

**12 New section 40 substituted**

Section 40 is repealed and the following section substituted:

- “**40 Interest on unpaid legal aid debt**
- “(1) **Subsection (2)** applies to any amount that is payable in respect of a grant of legal aid made on or after the commencement of this section (as substituted by **section 12** of the Legal Services Amendment Act **2011**). 20
- “(2) An aided person must pay the Commissioner interest, calculated in accordance with, and at the rate or rates prescribed by, the regulations on any debt that is owed, during any period specified in the regulations, by the aided person to the Commissioner in respect of a grant of legal aid. 25
- “(3) **Subsection (4)** applies to a debt (a **prior debt**) that is owed by an aided person to the Commissioner in respect of a grant of legal aid made before the commencement of this section (as substituted by the Legal Services Amendment Act **2012**). 30
- “(4) The Commissioner may, by written notice, require the aided person to pay interest in respect of the prior debt (whether or not the person is in default), and then, as from the date stated 35

in the notice for the purpose, **subsection (2)** applies to the person and to the prior debt.

- “(5) Despite **subsection (2)**, interest is not payable—
  - “(a) on any interim repayment; or
  - “(b) unless the regulations otherwise provide, on any interest. 5
- “(6) The interest must be calculated and paid in accordance with the regulations.
- “(7) **Subsection (4)** does not affect any subsisting requirement under section 40(1) (as in force before the commencement of **section 12** of the Legal Services Amendment Act **2011**).” 10

**12A New headings and sections 41A to 41J inserted**

The following headings and sections are inserted after section 41:

*“Deduction notices”* 15

**“41A Interpretation**

In this section and in **sections 41B to 41J**, unless the context otherwise requires,—

- “**benefit**—
  - “(a) means a benefit within the meaning of the Social Security Act 1964; but 20
  - “(b) does not include—
    - “(i) an orphan’s benefit payable under section 28 of the Social Security Act 1964; or
    - “(ii) an unsupported child’s benefit payable under section 29 of that Act; or 25
    - “(iii) a child disability allowance payable under section 39A of that Act; or
    - “(iv) a disability allowance payable under section 69C of that Act 30

“**deduction notice** means a notice issued under **section 41B**

“**overdue amount** means an amount that has become due and payable to the Commissioner and that remains unpaid; and includes—

- “(a) any part of an amount of that kind; and 35

- “(b) an amount of that kind that may not be recovered by civil action in a court of law because of the Limitation Act 2010
- “**payment**, in relation to a third party, includes payments made, or to be made, by the third party as— 5
- “(a) salary or wages:
- “(b) a retiring allowance or pension or other payment of a similar nature:
- “(c) a benefit:
- “(d) weekly compensation under the Accident Compensation Act 2001: 10
- “(e) a bonus or an incentive payment:
- “(f) commission:
- “(g) consideration for work performed under a contract for services: 15
- “(h) repayment of, or interest on, money held by a bank to the credit of an aided person (within the meaning of **section 41E(3)**)
- “**third party** means the person required to make 1 or more deductions under a deduction notice. 20
- “Compare: 1957 No 87 ss 2(1), 79

“**41B Deduction of overdue amounts**

- “(1) This section applies whenever the Commissioner has reminded an aided person in writing of the person’s obligation to pay an overdue amount or has taken any other action to obtain payment of the overdue amount. 25
- “(2) The Commissioner may issue, in writing, a deduction notice requiring a third party to deduct an amount specified in the notice due from any payment that is payable or will become payable by the third party to the aided person, whether that payment will be made— 30
- “(a) on the third party’s own account; or
- “(b) in the third party’s capacity as an agent or a trustee; or
- “(c) for any other reason.
- “(3) The Commissioner must specify in the deduction notice— 35
- “(a) whether the deduction is to be made as a lump sum or by instalments; and

- “(b) the time or times by which the amounts deducted must be paid to the Commissioner; and
- “(c) the date on which the deduction notice takes effect, being a date not earlier than the date on which it was issued. 5
- “(4) The Commissioner must give the aided person a copy of the deduction notice.
- “(5) A deduction notice is revoked when the Commissioner notifies the third party in writing to that effect or issues a new deduction notice. 10
- “(6) The Commissioner—
  - “(a) may revoke a deduction notice at any time;
  - “(b) must revoke the deduction notice if satisfied that the overdue amount has been paid.
- “(7) Every deduction notice is subject to **sections 41C to 41J**. 15  
 “Compare: 1964 No 136 s 86A
  
- “**41C Issue of deduction notice to State sector employer**  
 In any case where an aided person is employed within a department (within the meaning of the State Sector Act 1988), a deduction notice may be issued to the chief executive of that department in respect of any salary or wages payable to the aided person. 20  
 “Compare: 1964 No 136 s 86B
  
- “**41D Discharge of obligation**  
 In any case where a third party deducts, under a deduction notice, any money payable to an aided person, the aided person is, to the extent of the amount deducted, discharged from his or her obligation to pay the overdue amount. 25  
 “Compare: 1964 No 136 s 86C
  
- “**41E Deduction notices issued to banks** 30
- “(1) Where the third party is a bank, any money held by the bank to the credit of the aided person is subject to the provisions of **section 41B** and the amount required to be deducted under the deduction notice is, without prejudice to any other remedies against the aided person or any other person, deemed to 35

be held in trust for the Commissioner and is a debt due to the Commissioner and may be recovered in any court or tribunal of competent jurisdiction.

- “(2) For the purposes of this section, **bank** means a person carrying on in New Zealand the business of banking, a credit union within the meaning of the Friendly Societies and Credit Unions Act 1982, and a building society within the meaning of the Building Societies Act 1965; but does not include the Reserve Bank of New Zealand established under the Reserve Bank of New Zealand Act 1989 (except in relation to an account maintained by that bank for an employee of the bank). 5 10
- “(3) For the purposes of this section, **money held by the bank to the credit of the aided person** includes money, and any interest on money, that is on deposit or deposited with a bank to the credit of the aided person, whether or not— 15
- “(a) the deposit or depositing is on current account:
- “(b) the money is to be at interest at a fixed term or without limitation of time:
- “(c) the aided person has made any application to withdraw or uplift the money. 20
- “(4) For the purposes of this section, money on deposit with a bank is deemed to be to the credit of the aided person if the money—
- “(a) is held in a joint bank account in the name of the aided person and 1 or more other persons; and
- “(b) can be withdrawn from the account by or on behalf of the aided person without a signature being required at the time of that withdrawal from, or on behalf of, the other person or persons. 25

“Compare: 1964 No 136 s 86D

“**41F Making of deductions** 30

- “(1) Any person who makes a deduction under a deduction notice is deemed to be acting—
- “(a) on the authority of the aided person and any other person concerned; and neither the aided person nor that other person has any claim against the third party or the Commissioner or the Crown in respect of that deduction; and 35



“(b) on behalf of the Commissioner; and, without prejudice to any other remedies against the aided person or any other person, any amount deducted must be held in trust for the Commissioner and is a debt due to the Commissioner and may be recovered in any court or tribunal of competent jurisdiction. 5

“(2) A third party must, on request, give the aided person a statement in writing of any amount deducted, and of the purpose for which the deduction was made.

“Compare: 1964 No 136 s 86E 10

“**41G Offences in relation to deduction notices**

“(1) Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who—

“(a) fails to make any deduction required by a deduction notice; or 15

“(b) fails, after making a deduction, to pay the amount deducted to the Commissioner within the time specified in the notice; or

“(c) permits payment to or on behalf of any person, other than the Commissioner, of any amount deemed to be held in trust for the Commissioner under **section 41E or 41F**. 20

“(2) Every employer commits an offence and is liable on conviction to a fine not exceeding \$1,000 who dismisses an employee or alters an employee’s position in the employer’s business or undertaking to the employee’s prejudice by reason of a deduction notice having been issued to the employer. 25

“Compare: 1957 No 87 s 106A; 1964 No 136 s 86F

“**41H Protected earnings**

“(1) Despite anything in **sections 41B to 41G**, where a deduction notice is issued to an employer of an aided person, the employer must not, in making deductions under the deduction notice, reduce the amount paid to the aided person by way of salary or wages in respect of any week to an amount that is less than 60% of the amount calculated as being the aided person’s net ordinary weekly pay for a week. 30 35

- “(2) For the purposes of this section, the aided person’s net ordinary weekly pay for a week is the balance left after deducting from the aided person’s ordinary weekly pay (as defined in section 8 of the Holidays Act 2003) the amount of tax required to be withheld or deducted in accordance with the PAYE rules of the Income Tax Act 2007 if that ordinary weekly pay were the only salary or wages paid to the aided person by the employer in respect of a week. 5
- “(3) For the purposes of this section, where deductions are required to be made from a payment of a kind described in any of **paragraphs (b) to (d)** of the definition of payment in **section 41A**, then— 10
- “(a) the payment is deemed to be salary or wages; and
- “(b) the person required to make the payment is deemed to be the employer of the aided person. 15
- “Compare: 1964 No 136 s 86G

“**41I Penalty for late deductions**

- “(1) A third party is liable to pay to the Commissioner a penalty calculated in accordance with **subsection (2)** if the third party fails wholly or in part to— 20
- “(a) deduct the amount required by the notice; or
- “(b) pay any amount deducted under the notice to the Commissioner by the time specified in the notice.
- “(2) The penalty referred to in **subsection (1)** must be calculated as follows: 25
- “(a) 10% of the amount in default or \$5, whichever is the greater:
- “(b) for each additional month or part of a month in which the amount in default or any part of the amount has not been deducted or, as the case may be, has not been paid to the Commissioner, a further penalty of 2% of that amount or part of the amount or \$1, whichever is the greater. 30
- “(3) The Commissioner may, in his or her discretion, remit the whole or part of a penalty if he or she is satisfied that the failure to make the deduction or the payment was due to circumstances reasonably beyond the third party’s control, or that, in 35

all the circumstances, the imposition of that penalty would be inequitable.

“(4) If the Commissioner decides to remit the whole or part of any penalty and any amount of the penalty has been paid under this section, the Commissioner may refund any excess. 5

“(5) An amount payable to the Commissioner under **subsection (1)** is a debt due to the Commissioner and may be recovered in any court or tribunal of competent jurisdiction.

“Compare: 1964 No 136 s 86I

**“41J Notices given to third parties 10**

The provisions of section 115 apply to a deduction notice given to a third party under **section 41B** except that if the third party is an agency, such as a business, government department, Crown entity or other instrument of the Crown, the notice may be left at, or posted to, the head office of the agency or to the office of the agency responsible for making the payment to which the deduction notice relates. 15

“Compare: 1964 No 136 s 86J

*“Decisions not to recover debt, write-offs, and refunds”.* 20

**13 Commissioner to refund excess payments**

Section 44 is amended by adding the following subsection as subsection (2):

“(2) In assessing the cost of services for the purposes of subsection (1)(b), any interest paid under **section 40** must be disregarded.” 25

**13A Reconsideration**

(1) Section 51 is amended by inserting the following subsection after subsection (1):

“(1A) A lead provider whose claim has been declined under **section 99(5)** may apply in the prescribed manner to the Commissioner for a reconsideration of the decision to decline the claim.” 30

- (2) Section 51(2) is amended by omitting “The application” and substituting “An application”.

**13B Grounds for review**

- (1) Section 52(2) is amended by inserting the following paragraph after paragraph (d): 5

“(da) any decision to depart from, or to refuse to depart from, fees prescribed by regulations under **section 114(1)(cc)**.”.

- (2) Section 52 is amended by inserting the following subsection after subsection (3): 10

“(3A) A lead provider may apply to the Tribunal for a review of the Commissioner’s reconsideration of a decision referred to in **section 51(1A)** on the ground that it is—

“(a) manifestly unreasonable; or

“(b) wrong in law.” 15

**13C Approval**

Section 77(2) is amended by omitting “any”.

**14 Review Authority established**

- (1) Section 84(2) is amended by adding “and may appoint 1 or more Deputy Review Authorities”. 20

- (2) Section 84(3) is amended by omitting “The person appointed as the Review Authority” and substituting “A person appointed under this section”.

**15 New sections 87A and 87B inserted**

The following sections are inserted after section 87: 25

**“87A Deputy Review Authority**

- “(1) A Deputy Review Authority appointed under section 84(2) has the functions, powers, duties, and immunities of the Review Authority and every reference to the Review Authority in sections 85 to 87 and in Part 3 of Schedule 3 is taken to include a reference to a Deputy Review Authority. 30

- “(2) This section is subject to **section 87B**.

**“87B Scope of functions of Deputy Review Authority**

- “(1) A Deputy Review Authority may review decisions only if—
  - “(a) the Review Authority is absent from duty for any reason; or
  - “(b) there is a vacancy in the office of Review Authority; or 5
  - “(c) the Review Authority has assigned a decision or a class of decision to the Deputy Review Authority in the interests of avoiding—
    - “(i) delay; or
    - “(ii) the perception of, or any actual, conflict of interest or other impropriety. 10
- “(2) If there are 2 or more Deputy Review Authorities, the Review Authority must nominate 1 Deputy Review Authority (the **nominated deputy**) to exercise the power under **subsection (1)(c)** and that nominated deputy may then exercise that power when the Review Authority is absent from duty (for any reason) or when there is a vacancy in the office of the Review Authority. 15
- “(3) A nomination—
  - “(a) must be in writing; and 20
  - “(b) is revocable at any time, in writing, by the person who made it or by his or her successor in office; and
  - “(c) until revoked, continues in force according to its terms even if the person who made it has ceased to hold the office of Review Authority. 25
- “(4) Despite **subsection (1)**, if, during the absence of the Review Authority from duty (for any reason) or a vacancy in the office of the Review Authority, there are 2 or more Deputy Review Authorities, a Deputy Review Authority may review a decision in accordance with **subsection (1)** only if— 30
  - “(a) that Deputy Review Authority is the nominated deputy; or
  - “(b) the decision has been, or is part of a class of decision that has been, assigned to that Deputy Review Authority under **subsection (1)(c)**. 35
- “(5) The fact that a Deputy Review Authority purports to exercise or perform, or to have exercised or performed, any function, duty, or power under this section or under an assignment under **subsection (1)(c)** or under a nomination under **subsection**

**(2)** is, in the absence of proof to the contrary, sufficient evidence of the person’s authority to do so.”

**16 Lead provider to claim for payment**

Section 97(2)(a) is amended by inserting “, less the user charge required to be paid by the aided person” after “provider”. 5

**17 Secretary to refer claim to Commissioner for decision**

Section 99 is amended by repealing subsection (4) and substituting the following subsections:

“(4) The Commissioner must decline—

“(a) any claim to the extent that it exceeds the maximum grant specified in the grant; and 10

“(ab) where a claim or part of a claim is for, or is determined by the Commissioner to be for, work of a kind for which a fee is prescribed by regulations pursuant to **section 114(1)(ca)** or authorised pursuant to **section 114(1)(cc)**, so much of that claim as exceeds the fee so prescribed or authorised; and 15

“(b) any claim to the extent to which it is for a disbursement of a type not approved for payment by the Commissioner; and 20

“(c) any claim or any part of a claim that has been determined to be excessive or inaccurate by an examination under subsection (2); and

“(d) if the user charge has not been paid by the aided person, an amount of the claim that is the equivalent of that charge. 25

“(5) The Commissioner may decline any claim that was not made in accordance with the time frame referred to in section 98.”

**18 Cancellation**

(1) Section 103(1) is amended by repealing paragraph (c) and substituting the following paragraph: 30

“(c) the provider takes an unauthorised payment from or in respect of a person in relation to any legal aid service or specified legal service provided to that person:”.

- (2) Section 103(4)(a) is amended by inserting “or will be deemed to have received it by virtue of section 115(2)” after “receive the notice”.
- (3) Section 103 is amended by adding the following subsection:
  - “(5) In any case where a notice of cancellation is posted to a person at the person’s last known place of residence or business in New Zealand and the Secretary knows or believes that the address is no longer current, then—
    - “(a) the notice is not invalid merely because of that knowledge or belief; and
    - “(b) the fact that the person has not received the notice is, despite section 115(2), only relevant if it is proved that the failure occurred through no fault of the person.”

**19 Regulations**

- (1AA) Section 114(1) is amended by inserting the following paragraphs after paragraph (c):
  - “(ca) prescribing fees, whether by specifying amounts or providing for 1 or more methods of calculating amounts, for items of work undertaken by providers for the purposes of proceedings (other than victims’ claims proceedings) described in the regulations, which fees may differ depending on factors stated in the regulations, including, without limitation, 1 or more of the following:
    - “(i) the subject matter of the proceeding;
    - “(ii) the court or tribunal in which the proceeding or an application or a matter in the proceeding is to be determined;
  - “(cb) exempting, in accordance with subsection (8), any class of proceeding from any specified regulation made under **paragraph (ca)**;
  - “(cc) providing for the Commissioner to authorise fees that depart from the fees prescribed under **paragraph (ca)** if, and only if, criteria prescribed under **paragraph (cd)** apply;
  - “(cd) prescribing criteria for the purposes of any authorisation that the Commissioner is empowered to give under **paragraph (cc)**.”

- 
- (1) Section 114(1) is amended by inserting the following paragraph after paragraph (e):
- “(ea) prescribing the amount of the user charge, including different amounts for user charges relating to different classes of proceeding:” 5
- (1A) Section 114(1) is amended by inserting the following paragraph after paragraph (i):
- “(ia) specifying kinds of expenses or payments for the purposes of **section 33(1)(d)**:”
- (2) Section 114(1) is amended by repealing paragraph (k) and substituting the following paragraph: 10
- “(k) prescribing the way or ways in which the interest under **section 40** is to be calculated and, in particular and without limitation, the rate or rates of interest, the periods during which interest accrues, and the circumstances in which, and the intervals at which, interest is compounded:” 15
- (2A) Section 114(1)(o)(ii) is amended by inserting “or **18A**” after “section 18”.
- (3) Section 114(1) is amended by repealing paragraph (w) and substituting the following paragraph: 20
- “(w) prescribing the time frame or time frames in which claims for payment for legal aid services or specified legal services may be made, and different time frames may be prescribed for different classes, stages, or levels of complexity of services provided:” 25
- (4) Section 114(2) is amended by inserting “including the calculation of interest,” after “calculating amounts,”.
- (5) Section 114(5) to (7) are repealed.
- 19A Service of notices, etc** 30  
Section 115(1)(b) and (c) is amended by inserting “or business” after “of residence”.
- 22 Schedule 3 amended**  
Schedule 3 is amended by repealing clause 24 and substituting the following clause: 35



**“24 Vacation of office**

“(1) The Review Authority may at any time be removed from office by the Minister for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister. 5

“(2) The Review Authority may at any time resign by written notice to the Minister.

“(3) The Review Authority ceases to hold office if he or she is adjudged bankrupt under the Insolvency Act 2006.”

**23 Transitional provision 10**

(1) In this section, **amendment** includes a textual change to a provision, the substitution or insertion of a new provision, or the repeal of a provision.

(2) An application for legal aid received by the Commissioner before an amendment to the principal Act by this Act comes into force must be considered and determined as if the amendment had not been made. 15

(3) An amendment to the principal Act by this Act does not affect the administration of a grant of legal aid made before the amendment comes into force and the grant must be administered as if the amendment had not been made. 20

(3A) Despite **subsection (3), section 10(3A)** of the principal Act as inserted by **section 7(2)** of this Act also applies to any amount payable by an applicant in respect of a grant made before the commencement of **section 7(2)**. 25

(3B) Until the commencement of section 41 of the Legislation Act 2012, section 16A(8) of the principal Act, as inserted by section 9 of this Act, must be read as if it declared that a notice under section 16A(7) of the principal Act is subject to the Regulations (Disallowance) Act 1989, but not to the Acts and Regulations Publication Act 1989. 30

(4) Despite **subsection (3)**, the amendment made by **section 12**, so far as applicable, applies to grants of legal aid made before the commencement of that section.

### **23AA Liability for fee and expenses incurred in lodging prior caveats**

- (1) This section applies where, in connection with a grant of legal aid made before the commencement of this section, a caveat (a **prior caveat**) has, pursuant to section 15(4) of the Legal Services Act 2000 or section 18(4) of the principal Act, been lodged against dealings in any land or estate or interest owned by the aided person. 5
- (2) The Commissioner may recover the fee for, and any expenses reasonably incurred in, lodging a prior caveat from the aided person as a debt due to the Commissioner, to the extent that the Commissioner or the Legal Services Agency has not previously been reimbursed for the fee and the expenses. 10
- (3) No payment made to the Commissioner or the Legal Services Agency in reimbursement of the fee for, and any expenses reasonably incurred in, lodging a prior caveat may be recovered or claimed by way of set-off. 15

. . . . .

---

#### **Legislative history**

2 July 2013

Divided from Legal Assistance Amendment Bill (Bill 316–2) by committee of the whole House as Bill 316–3A

---