

# **Legal Services Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Legal Services Amendment Bill will remove legal aid funding for a report or statement (whether oral or written) of a person called by an offender under section 27 of the Sentencing Act 2002 (a **section 27 report**). That section allows the court to hear any persons called by the offender to speak at the sentencing hearing about the offender's background and its relationship to the offending, as well as the support the offender has from family, whānau, or community that might help prevent further offending. This information informs judicial decisions about the type and length of a sentence. For offenders who receive legal aid, the cost of section 27 reports can also be met by the Government under their grant of legal aid. There has been a significant increase in the use of section 27 reports. In 2017, there were 9 section 27 reports funded by legal aid and the Public Defence Service, costing a total of \$17,164. In 2022, there were 2,429 section 27 reports at a cost of \$6.45 million.

### **Departmental disclosure statement**

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=12>

### **Regulatory impact statement**

The Ministry of Justice produced a regulatory impact statement on 7 December 2023 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that the Bill comes into force 14 days after Royal assent.

*Clause 3* provides that the Bill amends the Legal Services Act 2011 (the **principal Act**).

*Clause 4* amends section 99(4) of the principal Act to insert *new paragraph (ca)*. The effect of the amendment is that, after the commencement of the Bill, the Legal Services Commissioner (the **Commissioner**) must decline any claim for payment of legal aid to the extent to which it is for a disbursement incurred in relation to a report or statement (whether oral or written) of a person called by an offender under section 27 of the Sentencing Act 2002.

*Clause 5* inserts *new Part 3* into Schedule 1AA of the principal Act. *New Part 3* contains transitional provisions relating to claims for payment of legal aid that are in progress when the Bill comes into force. *New Part 3* provides that if a grant of legal aid that includes a disbursement incurred in relation to a report or statement (whether oral or written) of a person called by an offender under section 27 of the Sentencing Act 2002 has been approved before the commencement of the Bill, but the claim for payment has not yet been determined by the Commissioner under section 99 of the principal Act, the claim must be determined by the Commissioner as if *new section 99(4)(ca)* had not been enacted.

*Hon Paul Goldsmith*

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### **New Part 3 inserted into Schedule 1AA**

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

- 1 Title**  
This Act is the Legal Services Amendment Act **2024**.
- 2 Commencement**  
This Act comes into force 14 days after Royal assent. 5
- 3 Principal Act**  
This Act amends the Legal Services Act 2011.
- 4 Section 99 amended (Secretary to refer claim to Commissioner for decision)**  
After section 99(4)(c), insert: 10

- (ca) any claim to the extent to which it is for a disbursement incurred in relation to a report or statement (whether oral or written) of a person called by an offender under section 27 of the Sentencing Act 2002; and

**5 Schedule 1AA amended**

In Schedule 1AA,—

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- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

**Schedule**  
**New Part 3 inserted into Schedule 1AA**

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| <b>Part 3</b>  |    |
| <b>Provisions relating to Legal Services Amendment Act 2024</b>  | 5  |
| <b>6 Interpretation</b>  |    |
| In this Part,—   |    |
| <b>amendment Act</b> means the Legal Services Amendment Act <b>2024</b>  |    |
| <b>commencement</b> means the commencement of the amendment Act  |    |
| <b>disbursement</b> means a disbursement relating to a report or statement (whether oral or written) of a person called by an offender under section 27 of the Sentencing Act 2002.      | 10 |
| <b>7 Grant for disbursement approved but claim not determined before commencement of amendment Act</b>   |    |
| (1) This clause applies if, before commencement,—  | 15 |
| (a) the lead provider has obtained the Commissioner’s approval to incur a disbursement as part of a grant of legal aid; but  |    |
| (b) the Commissioner has not approved, deferred, or declined payment of a claim for payment in respect of legal aid services or specified legal services that includes the disbursement. | 20 |
| (2) The Commissioner must approve, defer, or decline payment of the claim as if <b>section 99(4)(ca)</b> had not been enacted.   |    |