

# House of Representatives

## Supplementary Order Paper

Thursday, 27 September 2012

### Legal Assistance (Sustainability) Amendment Bill

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*Proposed amendments*

Hon Judith Collins, in Committee, to move the following amendments:

*Clause 4*

In *clause 4(3)*, replace “definition” (line 12 on page 5) with “definitions”.

In *clause 4(3)*, replace “its” (line 13 on page 5) with “their”.

In *clause 4(3)*, before the new definition of **user charge** (before line 14 on page 5), insert:

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

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

“(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

“(d) 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 (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

“(iii) any victims’ claims proceedings; or

“(e) to enable—

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

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

*Clause 6*

Delete *clause 6* (line 1 on page 6 to line 16 on page 8).

*Clauses 7 to 9*

Replace *clauses 7 to 9* (line 17 on page 8 to line 6 on page 10) with:

- 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 prescribed in regulations, unless 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.
- “(2A) However, in the case of an application that comes within any of **paragraphs (b), (c), and (e) to (g)** 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.”
- (2) Section 10 is amended by inserting the following subsection after subsection (3):
- “(3A) The Commissioner may 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), (c), (e), and (g)** of the definition of specified application in section 4(1).”
- (3) Section 10(6)(c) is repealed.

*New clause 9A*

Before *clause 10* (before line 7 on page 10), insert:

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

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 (d)(ii)** of the definition of specified application in section 4(1); or
  - “(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
  - “(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.”

*Clause 10: new section 18A*

In *clause 10*, replace *new section 18A(4)* (line 25 on page 10 to line 2 on page 11) with:

- “(4) This section does not apply to—
- “(a) a grant of legal aid made on a specified application; or
  - “(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.”

*New clause 11A*

After *clause 11* (after line 12 on page 11), insert:

**11A New heading inserted above section 36**

The following heading is inserted above section 36:

“*Charges*”.

*New clause 12A*

After *clause 12* (after line 5 on page 12), insert:

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

The following heading and sections are inserted after section 41:

*“Deduction notices*

**“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 Part 1 of the Social Security Act 1964; but
- “(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
  - “(iii) a child disability allowance payable under section 39A of that Act; or
  - “(iv) a disability allowance payable under section 69C of that Act

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

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

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

- “(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:
- “(e) a bonus or an incentive payment:
- “(f) commission:
- “(g) consideration for work performed under a contract for services

**“third party** means the person required to make 1 or more deductions under a deduction notice.

“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.
- “(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—
- “(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—
- “(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.
- “(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.
- “(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**.
- “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.

“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.

“Compare: 1964 No 136 s 86C

**“41E Deduction notices issued to banks**

- “(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 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).
- “(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—
- “(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.
- “(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.

“Compare: 1964 No 136 s 86D

**“41F Making of deductions**

- “(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
  - “(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.

- “(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

“**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

“(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**.

- “(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.

“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.

- “(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.

- “(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—

- “(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.

“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—

- “(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:

- “(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.

“(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 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) 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**

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.

“Compare: 1964 No 136 s 86J”.

*New clause 13A*

After *clause 13* (after line 11 on page 12), insert:

**13A Approval**

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

*Clause 19*

After *clause 19(2)* (after line 25 on page 14), insert:

- (2A) Section 114(1)(o) is amended by inserting in subparagraph (ii) “or **18A**” after “section 18”.

*Clauses 20 and 21*

Delete *clauses 20 and 21* (lines 1 to 5 on page 15).

*Clause 23*

After *clause 23(3)* (after line 29 on page 15), insert:

- (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)**.

*New subpart 1AA*

After the *Part 2 heading* (after line 2 on page 16), insert:

**Subpart 1AA—Accident Compensation Act 2001**

**23A Principal Act amended**

This **subpart** amends the Accident Compensation Act 2001.

**23B Entitlements inalienable**

Section 123(2)(j) is amended by adding “; or” and also by adding the following paragraph:

“(k) **section 41B** of the Legal Services Act 2011.”

*Clause 25*

Delete *clause 25* (lines 6 to 21 on page 16).

*Clause 29*

Delete *clause 29* (line 25 on page 19 to line 6 on page 20).

*Clause 32*

Delete *clause 32(1)* (lines 6 to 14 on page 21).

*Clause 33*

In the heading to *clause 33*, replace “**226A**” (line 16 on page 21) with “**226B**”.

In *clause 33*, delete *new section 226A* (lines 18 to 32 on page 21).

*Clause 34*

In *clause 34*, new *section 232(2)*, replace “**sections 226A(1) and 226B**” (line 14 on page 24) with “**section 226B**”.

*Clause 35*

Delete *clause 35* (lines 15 to 32 on page 24).

*Subparts 3 and 4*

Delete *subparts 3 and 4* (line 14 on page 25 to line 20 on page 28).

*Clause 45*

Delete *clause 45(1)* (lines 26 to 34 on page 28).

*Clause 46*

In the heading to *clause 46*, replace “**162A**” (line 1 on page 29) with “**162B**”.

In *clause 46*, delete *new section 162A* (lines 3 to 17 on page 29).

*Clause 47*

Delete *clause 47* (lines 8 to 26 on page 32).

*Clause 50*

Delete *clause 50(1)* (lines 25 and 26 on page 33).

*Clauses 51 and 52*

Delete *clauses 51 and 52* (line 28 on page 33 to line 30 on page 34).

*Schedule*

Delete the *Schedule* (pages 36 to 39).

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### Explanatory note

This Supplementary Order Paper makes a number of amendments to the Legal Assistance (Sustainability) Amendment Bill to—

- remove the proposed schedule of proceedings for which civil legal aid would be available;
- remove the new financial eligibility test for criminal proceedings involving offences punishable by imprisonment of 3 years or less and reinstate the existing means test;
- empower the Legal Services Commissioner to decline certain applications for legal aid where repayments owing by the applicant for previous legal aid grants are in arrears;
- empower the Legal Services Commissioner to recover overdue debts owing by an aided person for previous legal aid grants by issuing deduction notices that require employers, banks, and other agencies to pay the Commissioner amounts deducted from payments due to the aided person;

- reinstate the existing exemption for household goods in assessing disposable capital:
  - remove the requirement that lawyers for the child and youth advocates be approved under the Legal Services Act 2011 to be eligible for appointment:
  - make various technical and drafting changes.
-