

Reprint
as at 1 November 2015



Legal Services Regulations 2011 (SR 2011/144)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 23rd day of May 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 114 of the Legal Services Act 2011, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Justice.

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Regulations

1 Title

These regulations are the Legal Services Regulations 2011.

2 Commencement

These regulations come into force on 1 July 2011.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Legal Services Act 2011

applicant means a person who has applied for or been granted legal aid

Commissioner means the Legal Services Commissioner.

- (2) Any term that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

4 Application

- (1) These regulations apply to applications for legal aid made on or after 1 July 2011.
- (2) Nothing in subclause (1) limits or affects the application of section 132 of the Act (which relates to legal aid granted, applications for legal aid made, and repayment obligations for grants of legal aid made under the Legal Services Act 2000).

Regulation 4(2): inserted, on 2 July 2012, by regulation 4 of the Legal Services Amendment Regulations 2012 (SR 2012/95).

Financial eligibility for legal aid

5 Legal aid for civil matters: maximum levels of income

- (1) The maximum levels of income for the purposes of determining an applicant's eligibility for legal aid in respect of a civil matter are—
- (a) \$22,366 per year for a single applicant:
 - (b) \$35,420 per year for an applicant with—
 - (i) a spouse or partner; or
 - (ii) 1 dependent child:
 - (c) \$50,934 per year for an applicant with—
 - (i) a spouse or partner, and 1 dependent child; or
 - (ii) 2 dependent children:
 - (d) \$57,880 per year for an applicant with—
 - (i) a spouse or partner, and 2 dependent children; or
 - (ii) 3 dependent children:
 - (e) \$64,678 per year for an applicant with—
 - (i) a spouse or partner, and 3 dependent children; or
 - (ii) 4 dependent children:

- (f) \$72,302 per year for an applicant with—
 - (i) a spouse or partner, and 4 dependent children; or
 - (ii) 5 dependent children.
- (2) If an applicant has more than 5 dependent children, or has a spouse or partner and more than 4 dependent children, the maximum level of income for that applicant is calculated by adding to the amount specified in subclause (1)(f) a further \$6,689 for each additional child.

6 Legal aid for civil matters: maximum levels of disposable capital

- (1) The maximum level of disposable capital for the purposes of determining an applicant's eligibility for legal aid in respect of a civil matter is \$3,500.
- (2) If the applicant has a spouse or partner, or 1 or more dependent children, the maximum level of disposable capital for that applicant is calculated by adding an allowance of \$1,500 to the amount specified in subclause (1).

Calculation of resources

7 Determining disposable capital: home equity allowance

The allowance for the purpose of clause 3(1)(a) of Schedule 1 of the Act is \$80,000.

8 Determining capital and disposable capital: valuation of assets

- (1) This regulation applies for the purposes of valuing—
 - (a) an applicant's capital in accordance with clause 1 of Schedule 1 of the Act; and
 - (b) an applicant's disposable capital in accordance with clause 3 of that schedule.
- (2) The value of the assets is their fair market value at the date of the application for legal aid.
- (3) Any interest in a reversion or remainder (whether legal or equitable) in any property must be computed in a manner that is both fair and reasonable.
- (4) Any interest in any trust or other fund (whether the applicant's interest is held solely, jointly, or in common, and whether it is vested or contingent), or any benefit that the applicant might receive in connection with any trust (for example, a discretionary trust), must be assessed with regard to—
 - (a) how the trust arose or was created; and
 - (b) the terms and conditions of the trust; and
 - (c) the person or persons who have power to appoint and remove trustees or beneficiaries; and
 - (d) the history of the trust's transactions (for example, distributions); and
 - (e) any changes in the membership of the trustees; and

- (f) any changes in the class of beneficiaries; and
 - (g) the source of income or capital that the trust receives.
- (5) For the purposes of subclause (4), the Commissioner may treat all or part of the assets and income of a trust as assets and income of the applicant regardless of the interest of any other person in the trust.
- (6) If the applicant, or a person whose resources are to be treated as the applicant's resources, is under a contingent liability under an enactment or instrument to pay a sum, then the Commissioner must make an allowance for any amount that is reasonably likely to become payable within 6 months of the date of the application for legal aid.
- (7) If, in the opinion of the Commissioner, the applicant, or a person whose resources are to be treated as the applicant's resources, stands in relation to a company in a position analogous to that of sole owner or partner in the business of that company, the Commissioner may, instead of ascertaining the value of the person's shares in the company, treat the person as if he or she were the sole owner or partner, and compute the amount of his or her capital in respect of that asset accordingly.

9 Resources that have been disposed of

- (1) This regulation applies to any resources that an applicant has disposed of (whether directly or indirectly) in order to become eligible for legal aid, or to reduce or avoid repayments due to the Commissioner.
- (2) The Commissioner may include in the applicant's resources the resources referred to in subclause (1) when calculating the applicant's income, disposable capital, or capital for the purposes of determining the applicant's eligibility for legal aid or the repayment payable by the applicant.
- (3) The resources referred to in subclause (1) include—
- (a) any resources that the applicant has transferred to another person; and
 - (b) any resources that the applicant has converted into resources that would be wholly or partly disregarded under the Act or these regulations.

User charge

Heading: inserted, on 2 September 2013, by regulation 4 of the Legal Services Amendment Regulations 2013 (SR 2013/309).

9A User charge

For the purposes of section 18A of the Act, the amount of the user charge is \$43.48.

Regulation 9A: inserted, on 2 September 2013, by regulation 4 of the Legal Services Amendment Regulations 2013 (SR 2013/309).

9B Exemption from user charge for proceedings relating to historical abuse

- (1) The following proceedings are exempt from the user charge payable under section 18A of the Act:
 - (a) the proceedings described in subclause (2); and
 - (b) any appeals made in connection with those proceedings.
- (2) The proceedings referred to in subclause (1)(a) are proceedings commenced by an aided person against the Crown in respect of an incident, or an alleged incident, that—
 - (a) occurred before 1 July 1993; and
 - (b) involved the abuse (whether physical, sexual, or psychological) or ill-treatment of the aided person; and
 - (c) occurred while the aided person—
 - (i) had a disability or was under 18; and
 - (ii) was in the care of the Crown.

- (3) In this regulation,—

care of the Crown means care provided under the direction or supervision of a specified agency in—

- (a) a psychiatric hospital; or
- (b) a hospital care institution as defined in section 58(4) of the Health and Disability Services (Safety) Act 2001; or
- (c) an institution as defined in section 2 of the Child Welfare Act 1925; or
- (d) a residence as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989; or
- (e) a residential special school; or
- (f) any other place—
 - (i) defined or referred to in a repealed enactment and carrying a similar meaning to a place described in paragraphs (a) to (e); or
 - (ii) that is otherwise closely associated with, or similar to, a place described in paragraphs (a) to (e)

disability has the meaning given in section 21(1)(h) of the Human Rights Act 1993

psychiatric hospital means a hospital within the meaning of section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992

residential special school means a special school established under section 98(1) of the Education Act 1964 that has a boarding facility for students attending the school

specified agency means—

- (a) the Ministry of Education and the Ministry of Social Development; and

- (b) any former government department that exercised substantially the same functions as a Ministry specified in paragraph (a) but operated under a different name; and
- (c) a board of trustees constituted under Part 9 of the Education Act 1989; and
- (d) any of the following whose liabilities have since been transferred to the Crown under section 28(d) of the New Zealand Public Health and Disability Amendment Act 2012:
 - (i) a hospital board;
 - (ii) an area health board;
 - (iii) any other organisation.

Regulation 9B: inserted, on 1 November 2015, by regulation 4 of the Legal Services Amendment Regulations 2015 (LI 2015/224).

Prescribed repayment amount

10 Prescribed repayment amount

For the purposes of sections 20 and 21 of the Act, the prescribed repayment amount is the total of—

- (a) the maximum amount payable based on capital determined under regulation 11; and
- (b) the maximum amount payable based on income determined under regulation 12.

11 Maximum amount payable based on capital

(1) The maximum amount payable based on capital is the amount set out in the first column of the table in Schedule 1 that corresponds to the capital thresholds—

- (a) set out in the applicable column of the table; and
- (b) that apply to the applicant's capital at the time that the grant is first approved.

(2) If the applicant's capital exceeds the capital thresholds, the maximum amount payable based on capital is the total of—

- (a) the highest maximum amount set out in the first column; and
- (b) all of the applicant's capital that exceeds the highest capital threshold amount set out in the applicable column.

12 Maximum amount payable based on income

(1) The maximum amount payable based on income is the amount set out in the first column of the relevant table in Schedule 2 that corresponds to the income thresholds—

- (a) set out in the applicable column of the table; and
 - (b) that apply in respect of the applicant's income at the time that the grant is first approved.
- (2) If the applicant's income exceeds the income thresholds, the maximum amount payable based on income is the total of—
- (a) the highest maximum amount set out in the first column; and
 - (b) the total difference between—
 - (i) the applicant's income; and
 - (ii) the highest income threshold amount set out in the applicable column.

Expenses associated with securing of debts

Heading: replaced, on 2 September 2013, by regulation 5 of the Legal Services Amendment Regulations 2013 (SR 2013/309).

13 Expenses associated with securing of debts

The following expenses are specified for the purposes of section 33(d) of the Act:

- (a) expenses incurred in preparing an agreement under section 34(3) of the Act:
- (b) expenses incurred in registering a charge:
- (c) expenses incurred in lodging a caveat.

Regulation 13: replaced, on 2 September 2013, by regulation 5 of the Legal Services Amendment Regulations 2013 (SR 2013/309).

Interest on unpaid legal aid debt

Heading: inserted, on 2 September 2013, by regulation 6 of the Legal Services Amendment Regulations 2013 (SR 2013/309).

14 Interest rate

For the purposes of section 40 of the Act, interest is payable at 8% per annum.

Regulation 14: replaced, on 2 September 2013, by regulation 6 of the Legal Services Amendment Regulations 2013 (SR 2013/309).

14A Period during which interest accrues

The period referred to in section 40(2) of the Act is the period commencing on the day that is 6 months after the date on which the debt is finally determined under section 21 of the Act and ending when the debt has been repaid in full.

Regulation 14A: inserted, on 2 September 2013, by regulation 6 of the Legal Services Amendment Regulations 2013 (SR 2013/309).

Victims' claims proceedings

15 Maximum grant to be specified for grants of legal aid

- (1) For the purposes of section 23(4) of the Act, the maximum grant to be specified for every grant of legal aid in respect of victims' claims proceedings is the following number of hours of legal services from a provider at the applicable hourly rate set by the Commissioner:
 - (a) 4 hours to prepare written material (which may include a request to hear oral submissions) to be put before the Tribunal determining the relevant claim;
 - (b) if that Tribunal agrees to hear oral submissions from the parties (or from their representatives),—
 - (i) 2 hours to prepare those submissions; and
 - (ii) the hours or parts of hours necessary to present those submissions or to otherwise attend hearings agreed to under section 38 of the Prisoners' and Victims' Claims Act 2005.
- (2) In this regulation, **Tribunal** means a tribunal within the meaning of section 4 of the Prisoners and Victims' Claims Act 2005.

Applications in respect of minors and others

16 Application by minors

An application for legal aid in respect of a civil matter for a person aged under 16 must be made by—

- (a) either of the person's parents; or
- (b) the person's guardian; or
- (c) a person who has the role of providing the day-to-day care for, or custody of, the person.

17 Application by persons incapable of completing application because of mental or physical infirmity

An application for legal aid in respect of a civil matter for a person who, by reason of mental or physical infirmity, is incapable of completing an application for legal aid may be made on behalf of the person by any responsible person (including an officer of Public Trust) with sufficient knowledge of the applicant's affairs.

18 Application by non-residents

- (1) An application for legal aid by a person who is not resident in New Zealand (a **non-resident**) may be made by the applicant's lawyer or other person authorised by the applicant.

- (2) Despite subclause (1), the statement of financial means required by section 14(1)(b) of the Act to be included in the application must be completed by the non-resident personally (unless regulation 16 or 17 applies).
- (3) A person signing an application on behalf of a non-resident applicant must state in the application that the applicant has not signed it personally because he or she is not in New Zealand.

Payment for legal aid work

19 Claiming for payment for legal aid services

- (1) A claim for payment for legal aid services must be made for each day that the services are provided, unless the services are subject to a fixed fee arrangement, in which case the claim must be made for services that are completed in accordance with the fixed fee arrangement.
- (2) For the purposes of section 98 of the Act, the time frame within which a claim for payment for legal aid services must be made to the Secretary for Justice is the period—
 - (a) beginning immediately after the day on which the services are provided or, in the case of a fixed fee arrangement, immediately after the day on which services under the arrangement are completed; and
 - (b) ending 6 months after that date.
- (2A) Despite subclause (2), if the Secretary requires in writing that a claim for payment for legal aid services be made, that claim must be made within 90 days of the date of that requirement.
- (3) A claim for payment is deemed to have been made when it is received by the Secretary for Justice.

Regulation 19(2): replaced, on 2 July 2012, by regulation 5 of the Legal Services Amendment Regulations 2012 (SR 2012/95).

Regulation 19(2A): inserted, on 2 July 2012, by regulation 5 of the Legal Services Amendment Regulations 2012 (SR 2012/95).

Waitangi Tribunal report

20 Information required in report of Waitangi Tribunal

- (1) A report of the Waitangi Tribunal that must be supplied to the Commissioner under section 49 of the Act must contain the following information:
 - (a) whether the applicant has submitted a claim to the Waitangi Tribunal, and if so, the group (if any) for whose benefit the claim is submitted;
 - (b) a brief description of the claim including—
 - (i) the allegations made against the Crown; and

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- (ii) in relation to a specified period, the extent to which the Waitangi Tribunal has been engaged or is likely to be engaged (if this can be ascertained) in the claim:
 - (c) whether a provider representing the applicant has filed any documents or submissions in relation to the claim and, if so, whether the documents or submissions were filed solely in relation to the claim, or in relation to more than 1 claim:
 - (d) the extent to which the claim relates to other claims before the Waitangi Tribunal:
 - (e) whether the Waitangi Tribunal considers that the terms on which the applicant may be represented by a provider should be limited in any way and, if so, in what way.
- (2) In subclause (1)(b)(ii), **specified period** means a period specified by the Commissioner by reference to time, events, or both.

Schedule 1
Maximum amount payable based on capital

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Maximum amount payable based on capital (\$)	Capital thresholds for single applicants without children (\$)	Capital thresholds for all other applicants (\$)
0	0-1,500	0-2,000
50	1,501-1,900	2,001-2,400
145	1,901-2,300	2,401-2,800
270	2,301-2,700	2,801-3,200
430	2,701-3,100	3,201-3,600
625	3,101-3,500	3,601-4,000
850	3,501-3,900	4,001-4,400
1,090	3,901-4,300	4,401-4,800
1,270	4,301-4,500	4,801-5,000

Schedule 2
Maximum amount payable based on income

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Table 1
Maximum amount payable by applicant with spouse or partner

Maximum amount payable based on income (\$)	Income thresholds			
	No children (\$)	1 child (\$)	2 children (\$)	3 children (\$)
0	0-23,004	0-26,784	0-28,944	0-31,104
1,300	23,005-28,728	26,785-33,480	28,945-36,180	31,105-38,880
2,860	28,729-31,104	33,481-35,748	36,181-38,448	38,881-41,148
4,420	31,105-33,372	35,749-38,124	38,449-40,716	41,149-43,416
5,980	33,373-35,748	38,125-40,392	40,717-42,984	43,417-45,684
7,540	35,749-38,016	40,393-42,660	42,985-45,252	45,685-47,952
10,000	38,017-39,420	42,661-43,416	45,253-49,572	47,953-55,620
				4+ children (\$)
				0-33,156
				33,157-41,472
				41,473-43,740
				43,741-46,008
				46,009-48,276
				48,277-50,544
				50,545-61,776

Table 2
Maximum amount payable by single applicant

Maximum amount payable based on income (\$)	Income thresholds			
	No children (\$)	1 child (\$)	2 children (\$)	3 children (\$)
0	0-14,364	0-26,676	0-28,944	0-31,104
1,300	14,365-17,928	26,677-33,372	28,945-36,072	31,105-38,772
2,860	17,929-19,980	33,373-34,128	36,073-36,828	38,773-39,420
4,420	19,981-21,924	34,129-34,884	36,829-37,476	39,421-40,176
				4+ children (\$)
				0-33,156
				33,157-41,364
				41,365-42,120
				42,121-42,768

Maximum amount payable based on income (\$)	Income thresholds				
	No children (\$)	1 child (\$)	2 children (\$)	3 children (\$)	4+ children (\$)
5,980	21,925–23,976	34,885–35,532	37,477–38,232	40,177–40,824	42,769–43,524
7,540	23,977–26,028	35,533–36,288	38,233–38,880	40,825–41,580	43,525–44,172
10,000	26,029–27,540	36,289–37,260	38,881–43,416	41,581–49,572	44,173–55,620

Michael Webster,
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
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Reprints notes

1 *General*

This is a reprint of the Legal Services Regulations 2011 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Legal Services Amendment Regulations 2015 (LI 2015/224)

Legal Services Amendment Regulations 2013 (SR 2013/309)

Legal Services Amendment Regulations 2012 (SR 2012/95)