

Legal Services Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Legal Services Amendment Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

Introduction

The Legal Services Amendment Bill aims to improve access to legal assistance for people with low incomes. The bill would reduce barriers to accessing legal aid by repealing the provisions in the Legal Services Act 2011 that relate to payment of a user charge and payment of interest on unpaid legal aid debt.

We recommend two minor, technical amendments, which we discuss at the end of this report.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

About the submissions we received

We received submissions on the bill from 10 submitters. Four were from individuals and six were from organisations. All 10 submissions supported the bill and none suggested changes to the bill. However, all of the organisations that submitted stated that wider reform of the legal aid system is necessary.

The user charge is a barrier to accessing justice

The user charge, which is payable by most applicants for civil or family legal aid, was identified by submitters as a particular barrier to accessing justice. One submitter

noted that \$50 is a significant amount of money for those on low incomes. They argued that these people should not have to sacrifice other basic needs in order to access legal aid.

Two submitters who have provided legal aid services also told us that collecting the user charge is an administrative burden for practitioners.

Interest on legal aid debt

Five submitters referred to the financial difficulty caused by charging interest on legal aid debt. One submitter noted that legal aid clients often already have significant debts, and said that the accrual of interest adds to that debt and can lead to additional legal difficulties.

Some of us were concerned that removing interest from legal aid debt would remove the incentive to repay the debt. We were advised that if people do not pay their legal aid debts, the Legal Services Commissioner has the power to issue deduction notices directly to their employer or bank. The Commissioner also has the option to secure debt by placing a charge or caveat over the legal aid recipient's property as a condition of the grant.

Submitters requested wider reform of legal aid system

As noted above, the six organisations that submitted stated that while they support the bill, wider reform of the legal aid system is necessary. The suggestions for wider reform can be summarised as follows:

- Increase the remuneration available to legal aid lawyers.
- Increase the funding available to legal aid providers.
- Expand the types of cases that are eligible for legal aid.
- Increase legal aid thresholds.
- Increase innovation and research about access to justice.

We encourage the Government to consider these suggestions for wider reform.

Proposed amendments

We recommend the following two minor, technical amendments.

Clause 5 of the bill would repeal section 18A of the Legal Services Act so that it is no longer a condition of a grant of legal aid for a civil matter that the aided person pay a user charge. We recommend that a consequential amendment be made to section 114(1)(o)(ii) of the Act to delete the words "or 18A".

The schedule to the bill would amend schedule 1AA of the Legal Services Act by introducing a new Part 2 to this schedule. Clause 4(2)(b) of new Part 2 refers to the "2022 Amendment Act". We recommend that this reference be changed to "2022 Act" to align with the definition in clause 3 of new Part 2.

New Zealand National Party differing view

The National Party does not support this bill.

Legal aid is available for civil, criminal, and Waitangi Tribunal proceedings. Eligibility for legal aid is largely based on an applicant's income and their assets, offset by the number of dependents they have. Once an application for civil or family legal aid has been granted, applicants for most types of grants are required to pay a user charge to access the service. Legal aid grants may also be subject to repayment requirements, depending on the person's circumstances. Where there is a repayment obligation, the unpaid legal aid debt may accrue interest.

We agree that New Zealanders struggle to access justice. The most powerful thing the Government could do to improve New Zealanders' access to justice would be to speed up the very slow court processes, so that those involved in court proceedings do not have their lives kept on hold for years. Times for the completion of cases have blown out in all areas of the courts system in the past five years.

Rather than reducing the incentive for those with debts to repay those debts by removing interest, we believe any additional spending in the system would best be devoted to speeding up the process of justice, and secondly to improving the legal aid fees available, to make it a more attractive proposition for lawyers.

This legislation tinkers around the edges, while the Government fails effectively to address the bigger issues.

Appendix

Committee process

The Legal Services Amendment Bill was referred to the committee on 22 November 2022.

We called for submissions on the bill with a closing date of 3 February 2023. We received and considered submissions from 10 interested groups and individuals. We heard oral evidence from three submitters at hearings in Wellington.

We received advice on the bill from the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Vanushi Walters (Chairperson from 13 February 2023)

Hon Ginny Andersen (Chairperson until 1 February 2023, member until 8 February 2023)

Hon Paul Goldsmith

Dr Emily Henderson

Anahila Kanongata'a (from 8 February 2023)

Marja Lubeck (from 8 February 2023)

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Hon Willow-Jean Prime (until 8 February 2023)

Arena Williams

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kiritapu Allan

Legal Services Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Legal Services Amendment Act **2022**.
- 2 Commencement**
This Act comes into force on the day after the date of Royal assent. 5
- 3 Principal Act**
This Act amends the Legal Services Act 2011.

- Part 1**
- Amendments to principal Act**
- Subpart 1—Amendments relating to removal of user charge 10
- 4 Section 4 amended (Interpretation)**
In section 4(1), repeal the definition of **user charge**.
- 5 Section 18A repealed (User charge payable by aided person)**
Repeal section 18A.
- 6 Section 97 amended (Lead provider to claim for payment)** 15
Replace section 97(2)(a) with:
(a) the fees claimed by, or the charges attributable to, the lead provider; and
- 7 Section 99 amended (Secretary to refer claim to Commissioner for decision)**
Repeal section 99(4)(e). 20
- 8 Section 114 amended (Regulations)**
Repeal section 114(1)(ea).

Subpart 2—Amendments relating to removal of interest rate on legal aid debt

- 9 Section 33 amended (Amount payable by aided person to Commissioner)**
Repeal section 33(c).
- 10 Section 40 amended (Interest on unpaid legal aid debt)** 5
Repeal section 40.
- 11 Section 43 amended (Commissioner may write off amounts payable)**
In section 43(1), delete “interest,”.
- 12 Section 44 amended (Commissioner to refund excess payments)** 10
Repeal section 44(2).
- 13 Section 114 amended (Regulations)**
(1) Repeal section 114(1)(k).
(1A) In section 114(1)(o)(ii), delete “or 18A”.
(2) In section 114(2), delete “including the calculation of interest,”.
- Subpart 3—Transitional, savings, and related provisions 15
- 14 Schedule 1AA amended**
In Schedule 1AA,—
(a) insert the Part set out in the **Schedule** of this Act as the last Part; and
(b) make all necessary consequential amendments.

Part 2

20

Consequential amendments to Legal Services Regulations 2011

- 15 Principal regulations**
This Part amends the Legal Services Regulations 2011.
- 16 Regulations 9A and 9B and cross-heading above regulation 9A revoked** 25
Revoke regulations 9A and 9B and the cross-heading above regulation 9A.
- 17 Regulations 14 and 14A and cross-heading above regulation 14 revoked**
Revoke regulations 14 and 14A and the cross-heading above regulation 14.

Schedule Schedule 1AA amended

s 14

Part 2

Provisions relating to Legal Services Amendment Act 2022

3 Interpretation

In this Part,—

2022 Act means the Legal Services Amendment Act **2022**

commencement date means the date on which the **2022 Act** comes into force

legal aid debt means a debt owed to the Commissioner in respect of a grant of legal aid. 10

4 User charge

(1) This clause applies in respect of a grant of legal aid for a civil matter that immediately before the commencement date was subject to the condition in section 18A(1) (that the aided person pay a user charge of the prescribed amount to the lead provider). 15

(2) On and after the commencement date,—

(a) the grant of legal aid continues to be subject to the condition as if section 18A(1) had not been repealed by the **2022 Act**; and

(b) the following provisions, as in force immediately before the commencement date, continue to apply as if the **2022 Amendment Act** had not been enacted: 20

(i) section 18A(2) and (3):

(ii) section 97(2)(a):

(iii) section 99(4)(e): 25

(iv) regulation 9A of the Legal Services Regulations 2011.

5 Interest on unpaid legal aid debt

(1) This clause applies in respect of any interest on a legal aid debt that immediately before the commencement date was payable by an aided person to the Commissioner under section 40. 30

(2) On and after the commencement date,—

(a) the interest continues to be payable by the aided person as if section 40 had not been repealed by the **2022 Act**; and

(b) the following provisions, as in force immediately before the commencement date, continue to apply as if the **2022 Act** had not been enacted: 35

- (i) section 33(c):
- (ii) section 43(1):
- (iii) section 44(2):
- (iv) regulations 14 and 14A of the Legal Services Regulations 2011.

Legislative history

16 November 2022
22 November 2022

Introduction (Bill 190–1)
First reading and referral to Justice Committee