

## **Questions & Answers: Legal Assistance (Sustainability) Amendment Bill**

### **What does the Bill do?**

The Bill amends the Legal Services Act 2011 and other Acts to ensure that legal aid remains affordable in the future, while balancing the needs of vulnerable people who need access to legal aid.

It achieves this through adjusting eligibility for civil legal aid, increasing payments from legally aided people who are able to afford to repay their debt, and making administrative improvements to the legal aid system.

The Bill will ensure legal aid services remain affordable in the future and available for those who need them. Expenditure on legal aid rose sharply from \$111 million in 2006/07 to \$173 million in 2010/11 putting the legal aid budget under extreme pressure.

### **Why was the Bill changed in 2012?**

Original proposals in the Bill – as introduced to Parliament in August 2011 – included limiting eligibility for legal aid, the reintroduction of user charges for some family and civil legal aid cases, and charging immediate interest on legal aid debts.

In October 2012, the Government referred a supplementary order paper (SOP) on the Legal Assistance (Sustainability) Amendment Bill to the Justice and Electoral Select Committee for further consideration.

The SOP proposed changes to the Bill to align it with the benefits of the Family Court reforms, and provide a better balance between the needs of legally aided people and ensuring access to justice services.

The new changes allow the Government to strike the best balance between ensuring the financial viability of the legal aid scheme while still protecting the most vulnerable people.

### **What are the changes to the Bill?**

The main changes included the SOP and accepted by the select committee are:

- reducing the proposed user charge for civil and family cases from \$100 to \$50.
- changing the point at which legal aid debts will begin accruing interest. Interest will now be imposed six months after the total debt is finalised, rather than immediately.
- removing the proposal to tighten the financial means test for less serious criminal cases, such as theft, assault or careless driving.

- keeping the existing approval frameworks for lawyers who can provide lawyer for the child and youth advocate services, rather than creating new criteria and standards.
- retaining the list of types of proceedings eligible for legal aid in the Legal Services Act 2011. This means changes to the list must be made by Parliament, rather than the executive.
- allowing applications for civil legal aid to be refused if the applicant is in arrears for repayments on previous legal aid grants, unless the interests of justice require otherwise.

Additional proposals added to the Bill by the select committee are:

- allowing legal aid providers to apply for review or reconsideration of decisions to decline payment of invoices which were claimed outside the approved timeframe.
- allowing overdue repayments on legal aid debt to be recovered through notices deducting payments from wages, benefits or bank accounts.

### **What types of cases are exempt from changes to legal aid?**

Reforms to legal aid will not affect cases involving vulnerable parties, care and protection of children, and criminal matters.

For example:

- Cases such as domestic violence and mental health proceedings will be exempt from the \$50 user charge.
- Domestic violence, mental health, refugee and care and protection cases will be excluded from the new provision restricting the granting of some further civil and family legal aid to people who are not meeting their previous legal aid debt obligations.

### **What are the costs of the legal aid system?**

The current legal aid system is unsustainable, with expenditure rising from \$111 million in 2006/07 to \$173 million in 2009/10 – an increase of 56 per cent.

Due to the success of initial efforts to curb legal aid expenditure and proposed Family Court reforms, we have been able to make changes to the Bill that moderates some of the original proposals.

However, legal aid expenditure is still too high, particularly with ongoing fiscal pressures.

### **Who will still be eligible for legal aid?**

The types of cases people can get legal aid for will remain unchanged. That is: status quo. Income and asset test thresholds are not changing either.

The Bill keeps the current financial means test for criminal legal aid. This means people will be eligible for criminal legal aid in the same way that they are now.

The current definition of disposable capital in the means test will remain the same. The original wording of the Bill caused some concern that the value of household goods and tools of trade might effectively be counted as assets to reduce eligibility; this was not the intention, and the easiest way to clarify this is to retain the status quo.

### **What does the Bill do?**

The Bill tightens the merits test for granting legal aid in civil matters.

The Government expects the changes to primarily affect family matters, and to encourage parties to resolve more minor matters between themselves, rather than through the court system.

The eligibility changes will not apply to vulnerable people, for example, those people making applications under the Domestic Violence Act 1995 or the Children, Young Persons, and Their Families Act 1989.

People who are refused civil legal aid due to being in arrears on repayments of their legal aid debt, will be able to receive aid once they have restarted repayments.

These changes will help ensure the ongoing viability of the legal aid scheme and ensure legal aid is available in future for those who need it most.

### **How will the changes to the Bill affect lawyers?**

Lawyers who provide lawyer for the child and youth advocate services will continue to be approved under existing approval arrangements. The Government listened to submitters' concerns that there is no point in extending the legal aid quality assurance framework to these services.

Lawyers will be able to apply for review or reconsideration of decisions to decline payment of invoices which were claimed outside the approved timeframe.

### **How will the changes to the Bill affect legal aid clients?**

Proposed user charges in the Bill for some family and civil cases will be reduced, from \$100 to \$50. Having a small charge encourages legal aid recipients to consider whether it is worth taking a case to court, or if it is better to try resolving their dispute out of court.

Clients who have legal aid debts will have six months to repay part or all of their debt before interest is applied, rather than interest being applied immediately.

Overdue repayments on legal aid debt will be able to be recovered through notices deducting payments from wages, benefits or bank accounts.

### **When will the changes come into effect?**

The Bill is expected to come into effect later this year.

### **What else is the Government doing to address the financial viability of the legal aid system?**

Of the outstanding legal aid debt established since 2006, about \$35 million is unsecured or not subject to a repayment plan. The Ministry of Justice is stepping up efforts to recover this outstanding debt.

On-going operational reforms focus on improving the quality of legal aid services and reducing administrative costs. For details, see <http://www.justice.govt.nz/policy/justice-system-improvements/legal-aid/overview-of-reforms-to-the-legal-aid-system>.

### **How do these changes fit within the current legal aid reform?**

These changes complement other legal aid reforms made through the Legal Services Act 2011. That legislation addresses issues with legal aid services and administration that were identified by Dame Margaret Bazley's 2009 review of legal aid. That review did not address funding issues and the escalating expenditure associated with legal aid.

The new proposals seek to ensure legal aid is available in future for those who need it most, while balancing the needs of vulnerable people who need access to legal aid.

### **What else is being done to deliver better legal aid services?**

The Government has also put in place ongoing operational reforms to the legal aid system that focus on improving quality and reducing administrative costs. For details, see <http://www.justice.govt.nz/policy/justice-system-improvements/legal-aid/overview-of-reforms-to-the-legal-aid-system>.

The Ministry of Justice will continue to monitor the performance and financial viability of the legal aid scheme.