



## Part 18 – Reconsideration and review

|  |          |
|--|----------|
| <b>Reconsideration and Review .....</b>          | <b>2</b> |
| Introduction .....                               | 2        |
| Reconsideration by the Agency .....              | 2        |
| Legislation .....                                | 2        |
| Policy .....                                     | 2        |
| Review by the Legal Aid Review Panel (LARP)..... | 3        |
| The Panel .....                                  | 3        |
| Legislation .....                                | 3        |
| Policy .....                                     | 3        |
| Legal Aid Review Panel – contact details.....    | 4        |
| <b>Legal Aid for LARP Reviews .....</b>          | <b>5</b> |
| Introduction .....                               | 5        |
| Legislation.....                                 | 5        |
| Policy .....                                     | 5        |
| Procedure .....                                  | 6        |
| Applications .....                               | 6        |
| Would a reconsideration be appropriate?.....     | 6        |
| Eligibility.....                                 | 7        |
| Substantial hardship .....                       | 8        |
| Conditions on the grant .....                    | 10       |
| Fixed fee for LARP reviews .....                 | 10       |
| Confirm provider .....                           | 10       |
| Reconsideration and review rights .....          | 11       |

# Reconsideration and Review

## Introduction

Legally aided persons, applicants for legal aid and providers can apply to the Agency for a *reconsideration* or to the Legal Aid Review Panel for a *review* if they are dissatisfied with any decision made by the Agency. Either or both options may be pursued.

## Reconsideration by the Agency

### Legislation

The key sections of the Legal Services Act 2000 are:

- S 29(1) – aided persons and applicants for aid may apply for a reconsideration
- S 29(2) – reconsideration must be undertaken by someone other than the person who made the original decision
- S 29(3) – Agency may decline to reconsider the decision if that decision or a decision relating to the same issue has already been reconsidered.

### Policy

Section 29 provides that an aided person or an applicant for legal aid has the right to request a reconsideration of any decision that has been made by the Agency.

It is Agency policy that lead providers may also apply for a reconsideration of a decision made by the Agency in addition to aided persons and applicants for aid.

All requests for reconsiderations will be carried out by a Grants Team Leader, a Debt Officer, or an approved Agency staff member. This also applies to reconsiderations directed by the Legal Aid Review Panel.

The Agency staff member reconsidering the decision will not be the same staff member who made the original decision. The staff member responsible for the reconsideration may take into account any new or additional information supplied by the person applying for the reconsideration. The Agency may seek advice from a specialist adviser, as part of the reconsideration process.

The result of the reconsideration will be sent to both the lead provider and applicant/aided person.

The Agency may decline to reconsider a decision if it has already reconsidered that decision or a decision relating to substantially the same issue.

Applications for reconsiderations are to be made on the Agency's Form 11, *Application for Reconsideration*, which can be found in the Appendix to this manual or downloaded from the Agency's website [www.lsa.govt.nz](http://www.lsa.govt.nz).

There is no time frame for applying for a reconsideration.

The reconsideration process usually takes around 15 working days to complete.

## **Review by the Legal Aid Review Panel (LARP)**

### **The Panel**

Part 3 of the Act allows for the establishment of the Legal Aid Review Panel. The Legal Aid Review Panel is independent of the Agency. It comprises a Convenor who assigns a team of from one to three members to form a panel to review the decision of the Agency. Every Review Panel assigned must include one lawyer. The Panel's secretariat is based in Auckland.

### **Legislation**

The key sections of the Legal Services Act 2000 are:

- S 54 – specifying the grounds for review and the decisions that can be reviewed
- S 55 – setting the 20 day timeframe for applications
- S 56 – requiring the Agency to provide all relevant information and a submission
- S 57 – LARP may confirm, modify or reverse the decision under review
- S 58 – giving LARP the authority to require the Agency to reconsider a decision.

### **Policy**

Applicants for legal aid, legally aided persons and providers can apply to LARP for a review either before or after seeking a reconsideration by the Agency.

Section 54 provides that an aided person or an applicant for legal aid may apply to the Review Panel for a review of an Agency decision on the grounds that the Agency's decision is "manifestly unreasonable" or "wrong in law". A listed provider may seek a review on a remuneration decision on the same grounds.

The areas that may be reviewed are specified in s54(2) of the Legal Services Act:

- an application for legal aid
- any conditions imposed under section 15 or section 42 on a grant of legal aid
- any amount payable by an aided person, whether as an interim repayment or repayment, under a grant of legal aid,
- the identity of any listed provider in a grant of legal aid
- the maximum grant under a grant of legal aid
- the withdrawal of, or amendment to, a grant of legal aid
- the enforcement of any condition imposed under section 15 or section 42 on a grant of legal aid
- any changes to, or dealings with, a charge on property arising out of a grant of legal aid
- an application under section 41.

Applications to LARP must be made within 20 working days, however the Convenor of LARP may on application allow an extension in time. All requests for a LARP review must be sent directly to the Convenor, who will then allocate a LARP number and forward details of this to the applicant and the Agency.

Application is made on the appropriate LARP form, *Application for Review to Legal Aid Review Panel* which can be downloaded from the Agency's website [www.lsa.govt.nz](http://www.lsa.govt.nz). Legal aid is available to take a review to LARP. See 'Legal Aid for LARP' below.

Under s56(3)(a) of the Act, the Panel may require the Agency to provide all information relating to the decision under review and any reconsideration of the decision. The Agency has a process to ensure that only the documents relevant to the decision under review will be supplied to the Panel.

If new or additional information is available, which the Agency has not seen, it may be preferable to pursue a reconsideration by the Agency. This because LARP will refer the matter back to the Agency to reconsider if information is supplied to the Panel that the Agency did not have when making the original decision.

## Legal Aid Review Panel – contact details

**Convenor:** Julian Maze  
**LARP Administrator:** Rosemary Morris  
**Contact Details:** Legal Aid Review Panel  
1<sup>st</sup> Floor – rear, 40 Hurstmere Road,  
PO Box 33-837, Takapuna  
NORTH SHORE 0740  
DX BP66036  
Phone: (09) 489 1300,  
Fax: (09) 489 1301  
Email [administrator@larp.govt.nz](mailto:administrator@larp.govt.nz)

# Legal Aid for LARP Reviews

## Introduction

This policy sets out the Agency's approach to granting legal aid for LARP reviews under sections 54-58 of the Act.

## Legislation

### **7 Proceedings for which legal aid may be granted: civil matters**

(1) *Legal aid may be granted in respect of the following civil matters:*

*(e) in any case where the Agency considers that the case is one that requires legal representation (having regard to the nature of the proceedings and to the applicant's personal interest) and considers that the applicant would suffer substantial hardship if aid were not granted, proceedings in—*

*(v) any administrative tribunal or judicial authority (not being a tribunal or an authority in respect of any decision from which an appeal lies to any of the bodies referred to in any of paragraphs (f) to (j)):*

## Policy

The Legal Aid Review Panel (LARP) is an eligible forum in terms of s 7(1)(e)(v). Therefore, provided that the other eligibility criteria are met, the Agency will grant civil legal aid for aided persons to have a provider assist them with a review application to LARP.

Legally aided persons can apply for a LARP review of any decisions relating to a decision on an application for aid or on any conditions on their grant. The provider may submit this application, which LARP will treat as an application from the legally aided person.

A listed provider can apply for legal aid to file a LARP review of an amount payable under s 54(3). Eligibility for providers is to be determined on the basis of the criteria outlined in this section. However, these criteria are applied to the legally aided person's circumstances.

Legal aid is not available for reconsiderations. This is because:

- for aid to be granted, the applicant must be able to demonstrate that they are aggrieved by a decision made by the Agency, and
- a request for a reconsideration is not evidence of a dispute, as the applicant is simply asking the Agency to 'have another look' at the decision.

Agency policy is to not require interim repayments for grants to attend a LARP review unless there are special circumstances. The reasons for this policy are:

- the Agency is both a party to the review and the decision maker, and

- the relatively low cost of services involved.

Given that a LARP review cannot produce proceeds of proceedings, repayment from, and a charge on proceeds of proceedings, will not apply.

Write off applications will be assessed by the Agency's Debt Management Group:

- The grounds for write off will generally be those specified in s 37(1)(c): it would be just and equitable to write off the debt
- These grounds are particularly relevant in cases where the original decision was modified or reversed by LARP.

## Procedure

### Applications

Step 1. Applying for legal aid or an amendment to attend LARP.

- Application is to be made on Form 6 Civil/Family Application. This is because LARP reviews of criminal, civil and family legal aid decisions are civil proceedings in terms of s 7(1)(e)(v) of the Act.
- Applications for amendments are to be made on Form 9.
- A Civil Supplementary form (form 5) is not required to apply for aid or an amendment. This is because there is no hearing and the proceeding is relatively informal.
- Assessment of the application for legal aid for a LARP review is carried out by a staff member other than the person who made the original decision.

### Would a reconsideration be appropriate?

Step 2. The Grants Officer may offer a reconsideration if appropriate.

- LARP may refer the matter back to the Agency for a reconsideration if information is supplied to LARP that the Agency did not have when making the original decision.
- An offer to reconsider the decision may be made if:
  - the applicant provides more information, either with the application to LARP or the application for legal aid, that was not available when the original decision was made
  - the new or additional information could make a significant difference to the original decision
- If the offer of a reconsideration is not accepted, or the reconsideration confirms the original decision, go to Step 3, *The Grants Officer considers the nature of the proceedings and determines whether legal representation is required.*

## Eligibility



A decision about whether an application for legal aid to attend a LARP review is eligible under s 7(1)(e) requires the exercise of discretion. When making a decision, the Grants Officer will take into account:

- the nature of the proceedings, and
- the applicant's personal interest in the proceedings.

Step 3. The Grants Officer considers the nature of the proceedings and determines whether legal representation is required.

- The Grants Officer considers:
  - The paper-based and relatively informal nature of a LARP review, ie there is no hearing.
  - Whether the applicant is capable of preparing their own submissions (that is, self-representation).
  - The availability of a prescribed review application form.
  - The available and actual grounds for review (manifest unreasonableness and/or error in law).
  - The number, nature and complexity of issues raised by the decision under review, eg whether the issues are legal, factual, discretionary, mandatory, novel, settled etc.
  - The applicant's ability to access and marshal relevant information to meaningfully address the issues raised.
- Where there will be formal proceedings requiring written submissions, and/or the applicant is not capable of self-representation, the 'requires legal representation' ground will have been satisfied.
  - Go to step 4, *The Grants Officer considers the applicant's personal interest*.
  - If this ground can not be satisfied, aid will be refused under s 7(1)(e)(v). End of process.

Step 4. The Grants Officer considers the applicant's personal interest.

- Factors relevant to the 'applicant's personal interest' include (but are not limited to):
  - The nature of the substantive proceedings, eg whether they are criminal or civil, whether they concern human rights, children, property etc.
  - The potential consequences of the decision to be reviewed, eg the prospects of the applicant being represented/continuing in the substantive proceedings where the decision is one of refusing or withdrawing aid; the financial impact of a contribution or write-off decision etc.
- Where it is established that not granting aid would have real impact on the applicant, the 'applicant's personal interest' ground will have been satisfied.

- Go to step 5, *The Grants Officer determines whether the applicant would suffer substantial hardship.*
- If this ground can not be satisfied, aid will be refused under s 7(1)(e)(v). End of process.

## Substantial hardship



The statutory threshold in s7(e) is ‘substantial hardship’. Thus it is a higher threshold than the ‘serious hardship’ in s 37(1)(a) of the Act. *Serious* hardship is defined in exclusively financial terms as “*significant financial difficulties.*”

However, *substantial* hardship is a broader concept and would usually:

- put the applicant under considerable strain, and
- have a long-term impact on the applicant
- be caused directly by not granting legal aid.

Step 5. The Grants Officer determines whether the applicant would suffer substantial hardship.

- If the decision to be reviewed concerns the refusal/withdrawal of aid, the issue may involve an assessment of the financial impact of having to privately pay for:
  - legal representation for the LARP review; and
  - possibly the substantive proceedings as well.
- The financial factors identified in the Agency’s serious hardship policy may be relevant here:
  - Inability to meet minimum living expenses according to normal community standards.
  - Cost of medical treatment of illness or injury to the aided person or dependant.
  - Serious illness suffered by aided person or dependant
- The circumstances The nature of the request and the consequences for the applicant if aid were not granted contributing to the applicant’s current situation may include, but are not limited to:
  - personal factors such as medical conditions and disability, and
  - social considerations such as family arrangements and employment
  - loss of liberty in criminal and mental health proceedings,
  - emotional trauma in CYFS and domestic violence proceedings,
  - loss of employment
  - severe disruption to domestic arrangements.
- The nature of the request and the consequences for the applicant if aid were not granted:

- whether a refusal of aid would result in lack of access to legal advice and representation
- the effect of a refusal on the outcome of any proceedings for the person
- whether the consequences would be a major setback for the applicant. This could include their inability to continue to work or maintain important aspects of their life.
- Go to step 6, *The Grants Officer assess the application against the eligibility criteria in ss9-11.*

Step 6. The Grants Officer assesses the application against the eligibility criteria in ss9-11.

- The Grants Officer applies the mandatory eligibility tests:
  - s 9(1) 'natural person or trustee corporation' test.
  - s 9(2) 'income or disposable capital' test.
  - s 9(3) 'reasonable grounds' test.
  - s 10(1) and (2) 'immigration exclusions' test.
  - s 10(3) 'representative, fiduciary, or official capacity' test.
  - s 10(4) 'representative action' test.
  - s 11 'legal insurance or indemnification' test.
- The Grants Officer applies the discretionary eligibility tests:
  - s 9(4)(a) 'financial disclosure' test.
  - s 9(4)(b) 'prescribed repayment amount vs likely cost' test.
  - s 9(4)(d)(i) 'prospects of success' test.
  - s 9(4)(d)(ii) 'nature/interest vs cost' test.
  - s 9(4)(d)(iii) 'unreasonable or undesirable' test.
  - s 10(5) 'joinder of plaintiffs' test.
- When applying the discretionary tests, the Grants Officer will exercise their discretion to the benefit of the applicant.
- Go to step 7, *The Grants Officer determines eligibility*

Step 7. The Grants Officer determines eligibility The Grants Officer determines eligibility.

- Legal aid may be granted if the Grants Officer determines that:
  - the applicant requires legal representation at the LARP review, and
  - the applicant would suffer substantial hardship if aid was not granted, and
  - the application has met all the mandatory eligibility criteria, and

- the application has satisfied any applicable discretionary eligibility criteria,
- Go to Step 8, *The Grants Officer sets conditions on the grant.*
- Legal aid may be refused if the applicant and application does not satisfy the criteria above.
  - The applicant has reconsideration and review rights. Go to Step 11, *Reconsideration and review of a refusal of aid for LARP.*

## Conditions on the grant



It is Agency policy not to set an interim repayment on legal aid for LARP reviews unless there are special circumstances.

Step 8. The Grants Officer sets conditions on the grant.

- An interim repayment amount or plan will not be set unless there are special circumstances.
- A final repayment and a charge as security are potential conditions on the grant. However, a charge will not be imposed unless there are special circumstances.
- The aided person can request a write off of their final repayment
- Go to Step 9, *The Grants Officer sets the maximum grant.*

## Fixed fee for LARP reviews

Step 9. The Grants Officer sets the maximum grant.

- The guideline rate for a review will be a fixed fee of \$220 (including disbursements and GST).
- Payment above the fixed fee, up to a maximum of 3 hours at GHR, will be considered in special circumstances.
- Go to step 10, *The Grants Officer confirms the provider.*

## Confirm provider

Step 10. The Grants Officer confirms the provider.

- Providers may take a review to LARP on any matter for which they have a current listing.
- Therefore, the provider in the original matter may continue to act for the client at the LARP review. They do not need to hold a Civil – general listing.

## Reconsideration and review rights

Step 11. Reconsideration and review of a refusal of aid for LARP.

- The applicant can request that a decision to decline legal aid for a LARP review be reconsidered. This request will be forwarded to approved Agency staff member to undertake the reconsideration.
- The applicant can also apply to LARP for a review of a decision to refuse aid for a LARP review of the original decision.
  - The applicant may apply for legal aid for this LARP review.
  - However, given that the reasons for declining the first grant of aid are unlikely to have changed, it is highly unlikely that aid will be granted for the second LARP review.
  - End of process.