



## Part 3 – Applications for Legal Aid

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## Amending Incorrect Details on Application Forms

1. If an application is submitted with proof of income and it is clear that the calculations on the application form are incorrect, the Agency will:
  - Photocopy the application form and make all necessary amendments **on the copy**.
  - Sign and date the copy to identify who and when the changes were made and attach to the original.
  - Notify the applicant and lead provider if the error has a negative effect on the decision to grant aid.
2. In no circumstances will the Agency amend details on the original application form. This is because the applicant and lead provider have signed the statutory declaration indicating that the details contained in the application are true and correct.

## Helping potential legal aid applicants find a lawyer

1. Grants Officers who receive an enquiry from a member of the public about finding a civil/family lawyer, will:
  - refer callers to the list of lawyers on the website
  - use their local knowledge to advise callers who are having difficulty in finding a civil/family lawyer of local lawyers that they know have recently been doing legal aid cases. If possible this will include the matter type, e.g. if it is a domestic violence case, the Grants Officer provide details of family lawyers doing domestic violence work. Only the lawyer's name and telephone number will be provided.
  - explain to the person that they are not making a recommendation or referral and they do not know whether the particular lawyer is actually available
  - not show any preference in giving out lawyers names and if possible give at least two names
  - refer people to the Agency website where all lawyers details are listed, explaining that not all lawyers on the list may actively be taking legal aid cases
2. If Head Office or Debt staff receive these calls:
  - they will take the person's details and pass them (by email or phone) to a clerical officer in the local legal aid office to assist.
  - the query should then be passed to a Grants Officer or Team Leader immediately to follow up the matter and return the call within a day of receiving the message
  - this will be done on the same day.
3. For criminal matters, Grants Officers will refer the caller to the Duty Solicitor Scheme.

# Interim Applications

## General Completeness

Ensure that an interim application is:

1. Filed before matter has been finally disposed of by a Court or tribunal – section 12(1)(c).
  - Under subsection 12(2), the Agency has the discretion to accept an application after the matter has been disposed of, but only under certain conditions.
  - See ‘*Has the matter already been disposed of by a court, tribunal or by any other means?*’ in **Part 4 Eligibility for civil and family legal aid** for further information.
2. Completed on Form 6 *Application for Civil/family Legal Aid*.
3. Made by a listed provider
4. Signed and dated by the applicant/representative and lead provider.
5. Accompanied by a copy of proceedings or an explanation as to why no proceedings are enclosed/issued is enclosed with the application. See *Proceedings have not been filed, drafted or contemplated* in **Part 4 Eligibility for civil and family legal aid** for further information.
6. Fully completed, including an:
  - estimate of lead provider’s costs,
  - estimate of applicant’s calculated income and capital.

If the application form is returned to the provider:

1. If any of the details are not completed, the form will be returned to the Provider for completion, advising them of what is required.
2. Providers must return the original date-stamped application form with and any further information, as this date is used to determine whether an application is out-of-time or not.

## Grants Officer’s Decision

If the grant request is outside the standard rates:

1. If the lead provider advises of any special circumstances, the Grants Officer may refer the request to a Specialist Adviser for a recommendation. Refer to family and civil proceedings steps for situations in which applications will be referred to Specialist Advisers.
2. If no special circumstances exist, the Grants Officer can grant aid to appropriate standard rate.
3. Refer to **Part 4 Eligibility for civil and family legal aid** for the details Grants Officers require to make decisions.

The Grants Officer will make one (or a combination) of the following decisions:

1. Grant legal aid on an interim basis pending further information – S14(1)(b).
2. Request further information from applicant and/or lead provider – S14(1)(c).
3. Decline the application – S14(1)(d).

# Mental Health Applications

## General Completeness

Ensure that a Mental Health application is:

1. Filed before matter has been finally disposed of by a Court or tribunal – section 12(1)(c).
  - Under subsection 12(2), the Agency has the discretion to accept an application after the matter has been disposed of, but only under certain conditions.
  - See ‘*Has the matter already been disposed of by a court, tribunal or by any other means?*’ in **Part 4 Eligibility for civil and family legal aid** for further information.
2. Completed on Form 7 *Application for Mental Health Proceedings*.
3. Made by a listed provider
4. Signed and dated by the applicant/representative and lead provider.
5. Accompanied by a copy of proceedings or an explanation as to why no proceedings are enclosed/issued is enclosed with the application. See *Proceedings have not been filed, drafted or contemplated* in **Part 4 Eligibility for civil and family legal aid** for further information.
6. Fully completed including an:
  - estimate of lead provider’s costs,
  - estimate of applicant’s calculated income and capital.

**Note:** section 11 of the Legal Services Amendment Act 2006 specifically exempts mental health patients from repayment requirements.

If the application form is returned to the provider:

1. If any of the details are not completed, the form will be returned to the Provider for completion, advising them of what is required.
2. Providers must return the original date-stamped application form with and any further information, as this date is used to determine whether an application is out-of-time or not.

## Grants Officer’s Decision

If the grant request is outside the standard rates:

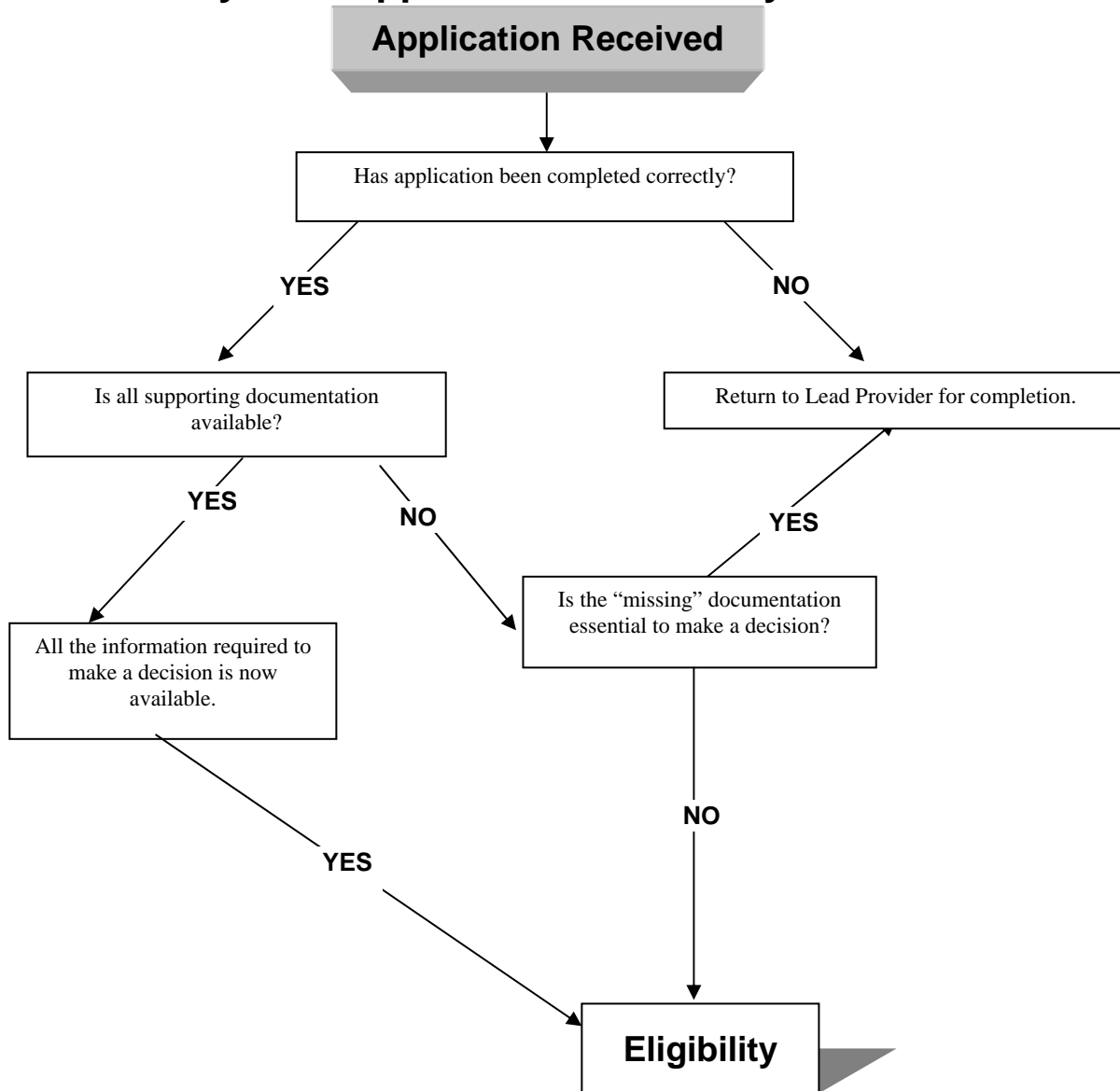
1. If the lead provider advises of any special circumstances, the Grants Officer may refer the request to a Specialist Adviser for a recommendation.
2. If no special circumstances exist, the Grants Officer can grant aid to appropriate standard rate.
3. Refer to **Part 4 Eligibility for civil and family legal aid** for details required to make decisions.

The Grants Officer will make one (or a combination) of the following decisions:

1. Grant legal aid – S14(1)(a).
2. Request further information from applicant and/or lead provider – S14(1)(c).
3. Decline application – s14(d).

# Family/Civil Applications

## New Family/Civil Application – summary



## Family/Civil Applications on Form 6

### General

1. The following applications are to be referred to the Wellington office:
  - All applications for legal aid to appeal a family or civil matter to the Court of Appeal and the Supreme Court.
  - Applications for Waitangi Tribunal proceedings.
  - All civil (other) applications.
2. All **family** applications should be directed to the Legal Services Agency office nearest the applicant.
3. All ACC and Employment applications are to be referred to the Christchurch office.
4. All applications relating to Refugee status are to be referred to the Manukau office.
5. Any application requiring urgent action because of an impending or critical Court timetable deadline and marked "for urgent action" by the provider will be assessed as to the urgency on the date it is received. If the Agency agrees it is urgent it is given priority. Otherwise, the Agency's timeliness standards apply.

### Completeness

Ensure that a family/civil application is:

1. Filed before matter has been finally disposed of by a Court or tribunal – section 12(1)(c).
  - Under subsection 12 (2), the Agency has the discretion to accept an application after the matter has been disposed of, but only under certain conditions.
  - See 'Has the matter already been disposed of by a court, tribunal or by any other means?' in **Part 4 Eligibility for civil and family legal aid** for further information.
2. Completed on Form 6 *Application for Family/Civil Legal Aid*
3. Is submitted by a listed provider who is approved for the appropriate category.
4. Signed and dated by applicant and lead provider.
5. Accompanied by the following attachments:
  - Proof of Income (See note on Financial details below)
  - A copy of proceedings (see note on Proceedings below)
  - Payment of initial contribution (See note on Financial details below).
6. Fully completed with all questions answered.

### Financial Details Complete

Ensure the following are attached/completed (if not, an explanation as to why not must be included in application):

1. Proof of current income and income for previous 12 months including spouse's (if applicable).

2. Asset details are fully completed on Form 6. The legally aided person and spouse (if applicable) may be requested to provide evidence of asset value. This may occur when the asset value is substantially less than a debt owed on that asset.
3. The Lead provider has completed the estimate of costs section on the application.

## Proceedings

A copy of the proceedings (including affidavits) should be enclosed with the application. If proceedings are not enclosed, the provider will need to include an explanation why. See *Proceedings have not been filed, drafted or contemplated* in **Part 4 Eligibility for civil and family legal aid** for further information.

## Returning the Application

4. If an application is incomplete and the missing information is essential to make a decision, the form will be returned to the Provider for completion, advising them of what is required.
5. Providers must return the original date-stamped application form with and any further information, as this date is used to determine whether an application is out-of-time or not.

## Grants Officer's Decision.

The Grants Officer will make one (or a combination) of the following decisions:

1. Grant legal aid – S14(1)(a).
2. Grant legal aid on an interim basis pending further information – S14(1)(b).
3. Request further information from applicant and/or lead provider – S14(1)(c).
4. Decline the application – S14(1)(d).

When granting legal aid (other than on an interim basis), the Agency must:

1. Specify the repayment requirements(if any), as described in section 15
2. Identify the lead provider
3. Specify a maximum grant.

## Civil applications

### Introduction

Civil is a varied and complex granting area, and staff are at times limited in their ability to make a granting decision due to the lack of specific information regarding the merits of civil cases.

Form 5 Civil Application has been designed to remedy this situation and to assist staff with obtaining the information required to make an informed granting decision.

### Policy

Apart from the exceptions listed below, providers are required to complete the Civil Application form (form 5) and forward it for consideration together with the Agency's form 6 civil/family application form.

Form 5 is **not** required for:

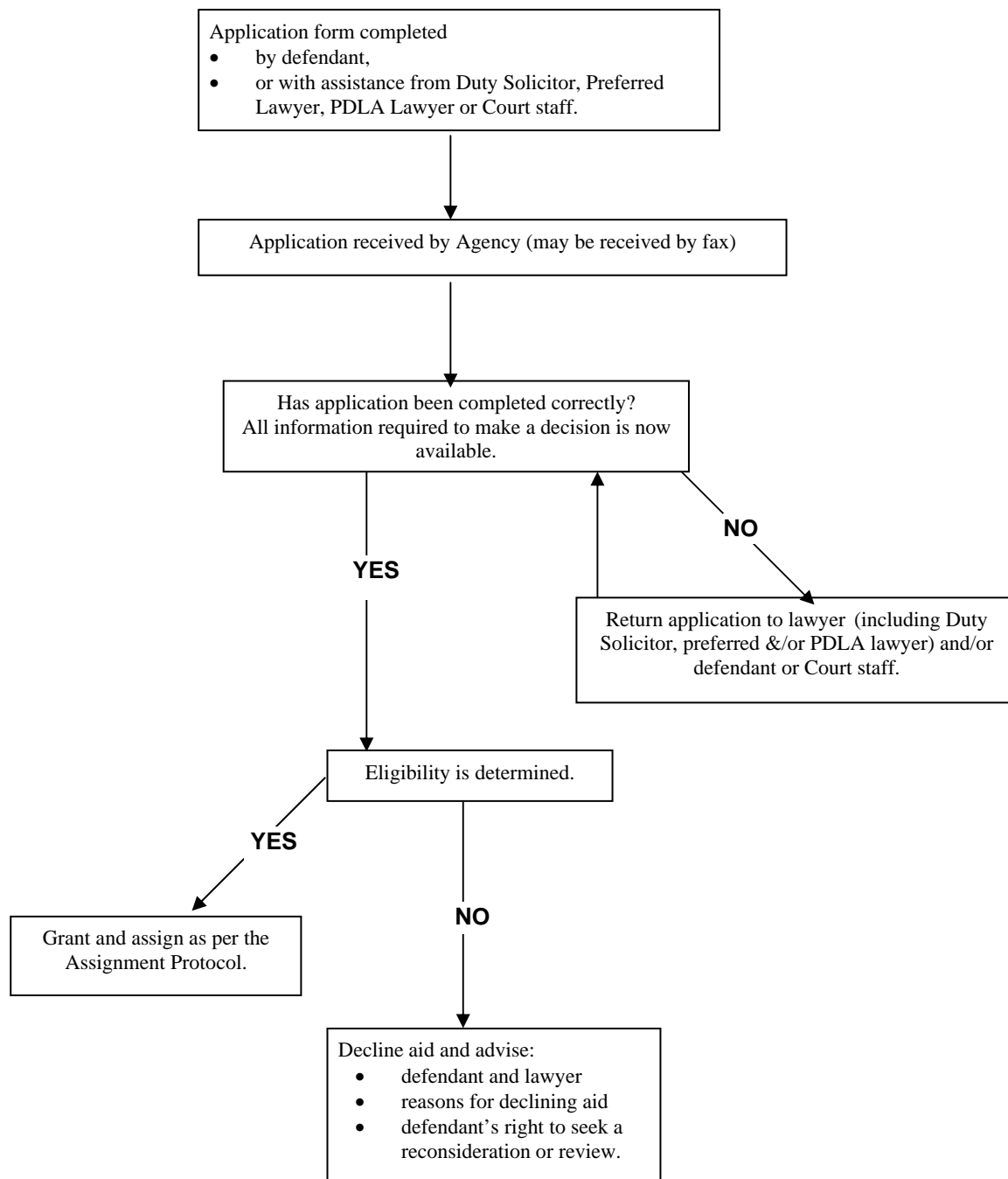
- ACC
- Employment
- Waitangi
- Refugee
- Maori Land Court
- Parole Board
- LARP
- Respondents to Agency appeals.

These areas of law have been identified as not requiring the additional form based upon a number of considerations, including:

- the comparative time taken to complete a case, and
- the level of detail already being provided with applications.

# Criminal Applications

## New Application – Criminal



## Criminal Legal Aid Application

### Decision making in urgent applications

1. An alternative procedure is available for assessing and approving criminal legal aid. This may be applied in certain urgent situations to a limited number of cases.
2. This procedure
  - allows a fast-track decision process for the financial assessment and decision in approving some grants as well as advising the applicant of conditions on the grant
  - is implemented only on approval of a Regional Manager
  - only applies to situations such as when a court requires immediate and urgent decisions to be made on a list day and application volumes means that Grants Officers cannot otherwise meet those court deadlines.
3. It is not expected that the fast-track procedure is used as matter of course but it may be necessary and helpful on some occasions.

### General Completeness

Ensure that a criminal application is:

1. Filed before the matter has been finally disposed of by a court or tribunal – section 12(1)(c).
  - Under subsection 12 (2), the Agency has the discretion to accept an application after the matter has been disposed of, but only under certain conditions.
  - See *'Has the matter already been disposed of by a court, tribunal or by any other means?'* in **Part 6 Eligibility for criminal legal aid** for further information.
2. Completed on Form 1 *Application for Criminal Legal Aid*.
3. Signed and dated by applicant.
4. All questions have been answered.

### Returning the Application Form

1. If any details are not completed, the form will be sent back to the duty solicitor/preferred lawyer or applicant for completion advising them of what is required. In Type 1 courts, the duty solicitor/preferred lawyer will be contacted on site, in Type 2 or 3 courts; a fax or email will be sent.
2. Return the original date-stamped application form with any further information, as this date is used to determine whether an application is out-of-time or not.

### Financial Details Completed

Ensure the following is completed (if not, an explanation as to why must be included in the application).

1. Details of current income and income of previous 12 months including spouse/partner's (if applicable).

2. Asset details of applicant and spouse/partner (if applicable). Applicant must provide details of asset values on request.

## **New Zealand Parole Board**

Applications are to be made to the nearest Agency office. Standard rates will be as specified in the proceedings steps on page CR9. Cases outside the standard rates may be referred to a specialist adviser.

## **Completing Form 1 Application for Criminal Legal Aid**

1. Defendants are to make application through a duty solicitor based at a District Court, or through a listed legal aid provider nominated by the defendant as a preferred lawyer (this includes PDLA lawyers).
2. Duty solicitors at all courts are required to assist defendants to complete application Form 1. This means ensuring the form contains all the information the Agency needs to make a considered decision. At times when a duty solicitor is not available, Court staff will continue to assist applicants.

## **General Agency requirements of all lawyers and courts staff who assist applicants**

Check that the information given on Form 1 is:

- legible (if applicant's name and address are not legible the Agency's letters will not reach them, and if charges are not clearly defined the seriousness of the case may not be evident.)
- complete (if insufficient information is supplied the application will be declined.) and ensure
- all information pertinent to 'interests of justice' factors is provided, and
- the applicant has completed the relevant questions and signed the form

## **Grants Officer's Decision**

The Grants Officer will make one (or a combination) of the following decisions:

1. Grant legal aid – s14 (1)(a).
2. Grant legal aid on an interim basis for an urgent hearing and pending instructions – s14 (1)(b).
3. Request further information from applicant or duty solicitor/preferred lawyer – s14 (1)(c).
4. Decline the application – s14 (1)(d).
5. Establish whether there will be a contribution.
6. Assign a lawyer (if required) from the list.
7. The initial amount of remuneration to be set is as follows:
  - \$300 for guilty plea.
  - \$1,000 for all others.

The Grants Officer will record their decision on Form 1.

## **When legal aid is refused - applications for reconsideration/LARP**

If an applicant is refused legal aid they will be directed to see a duty solicitor (or their preferred lawyer) for advice and assistance if appropriate with completing Reconsideration Form 11.