



## Part 6 – Income and capital assessment – civil/family and criminal legal aid

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# Income and capital assessment – civil/family and criminal legal aid

## When these procedures are used

These procedures are used to assess income and capital for both civil (including family) and criminal legal aid.

The procedures covering income and capital assessment are used to:

- determine eligibility for legal aid and
- set conditions on the grant (repayments).
- reassess eligibility due to a change of financial circumstances of the legally aided person.

## Legislation

The key parts of the Legal Services Act 2000 on the assessment of the applicant's income and capital are:

- s8(4) The Agency must have regard to income and disposable capital (in criminal matters)
- s9(2) *The Agency must refuse ...an applicant whose income or disposable capital exceed the relevant thresholds ...* (in civil matters)
- s13 *Special provisions relating to minors and mentally disordered persons*
- Schedule 1 *Definition of income and disposable capital*

The key parts of the Legal Services Regulations 2006 on the assessment of the applicant's income and capital are:

- Regulation 7 *Determining disposable capital: home equity allowance*
- Regulation 8 *Determining capital and disposable capital: valuation of assets*
- Regulation 9 *Resources that have been disposed of*

## Procedure

### Summary of steps

The Grants Officer makes the following assessment to calculate income and capital:

- the 12 month income period to be used
- whose income and capital resources are included
- the type and value of the income
- the type and value of capital covering
  - the type and value of assets
  - the type and value of debt
- disposable capital for eligibility and capital for repayment
- whether resources have been intentionally disposed of



The Grants Officer will complete both income and capital assessments as required by the Act and best practice. This applies even if they can see that the applicant will exceed either income or capital threshold (in civil/family) or have sufficient means (in criminal) before completing an assessment.

## The 12 month income assessment period



Under Schedule 1 cl 2(1), the Agency is required to apply the income assessment to *the 12 months immediately before the application of aid, or during such other period of 12 months as the Agency considers appropriate in the circumstances.*

The 12-month period to be selected is one that leads to a fair and accurate assessment of the applicant's financial circumstances.

Step 1. The Grants Officer selects one of the following 12-month periods, in order of preference.

Select...	Guidance
the 12 months immediately preceding the application	this will be the most frequently selected period (counts past income only and is used where there has been regular benefit and/or earned income payments throughout the year)
a 12-month period from the date of any significant change in income (counts past and/or prospective income)	for example, changes arising from moving from a well paid job to a benefit or vice versa)
a different 12-month period which reflects the average level of income (probably counts past and prospective income)	for example, applicant who regularly does seasonal work). Go to step 2, <i>Spouse or partner</i>
<i>Other Period</i> and enter the number of months in the Means Calculator,	where the applicant says they received income for less than 12 months.

## Income and capital resources included

### Resources of other person(s)

Once it has been determined that the resources of another person are to be treated as the applicant's resources, all references to 'applicant resources' assume the inclusion of these other resources.

### Spouse or partner



Schedule 1 clause 4 to the Act requires the Agency to treat the resources of a spouse or partner as the applicant's resources *unless the person is living apart from his or her spouse or partner; or, unless the person and his or her spouse or partner have contrary interests in the matter to which the proceedings relate.*


'Partner' refers to the applicant's *civil union partner or de facto partner* whether within a heterosexual or homosexual partnership.


Step 2. The Grants Officer confirms whether the applicant has a spouse or a partner.

Step	Guidance
When applying for aid the applicant will confirm whether he/she has a spouse or partner.	The Grants Officer may accept this statement unless there is other information provided to the Agency that suggests this is not a truthful statement.
If there is incomplete or seemingly inaccurate information about a spouse/partner and their resources so that a decision on eligibility or repayment cannot be made,	<p>The applicant is responsible for explaining either:</p> <ul style="list-style-type: none"> <li>▪ why the person should not be regarded as a spouse or partner or</li> <li>▪ why the resources of the other person should not be taken into account.</li> </ul> <p>The Grants Officer may:</p> <ul style="list-style-type: none"> <li>▪ request further information under s14</li> <li>▪ defer the decision on eligibility until the matter is clarified or</li> <li>▪ use the Agency policy on <i>Investigations of Allegations of Ineligibility</i> if a grant has already been approved.</li> </ul>
If it is determined that the applicant has a spouse or partner	<p>the assessment of the resources of the spouse or partner is exactly the same as for the applicant's resources.</p> <p>Go to step 3, <i>Circumstances</i>.</p>

Step 3. The Grants Officer determines whether any of the following circumstances exist.

Consider	Guidance
The spouse/partner has a contrary interest.	<ul style="list-style-type: none"> <li>▪ Contrary interests are evident if a spouse or partner is the opposing party to the proceedings or has an opposing interest in the outcome of the proceedings.</li> <li>▪ The Grants Officer will refer to the information about the matter/ proceedings (e.g.: an affidavit) to determine if the spouse/partner has a contrary interest.</li> <li>▪ In this situation the resources of the partner are <b>not</b> included in the eligibility and repayment assessments.</li> </ul>
The spouse/partner is a co-accused defendant	This is mostly likely a variation of the <i>contrary interest</i> – see above

Consider	Guidance
The person may not be a de-facto partner	<ul style="list-style-type: none"> <li>▪ The applicant may confirm that he/she is living with another person but not, or not yet, as a de-facto partner. This may be the case if the applicant is living with someone where each party is clear that the relationship is 'just a friendship' or it is a very newly formed relationship.</li> <li>▪ A key factor in this determination will be the nature of any financial interdependence between the applicant and other person. In this situation the applicant will need to demonstrate to the Agency that there is not a de facto relationship.</li> <li>▪ If the other person is not a de-facto partner, the resources are not included as the applicant's resources.</li> </ul> <p> Flat-mates or boarders are not de facto partners.</p>
The couple are living in different places	<ul style="list-style-type: none"> <li>▪ The assessment of 'living apart' is not based solely on whether the parties are physically cohabiting at the time of application; the parties' physical location might be considered but would not be a determinative factor.</li> <li>▪ This approach is consistent with the principles for determining whether a spouse or partner are either cohabiting or living apart under other statutes (e.g. Social Security Act 1964, Family Protection Act 1980, Property (Relationships) Act 1976).</li> </ul>
Examples where a couple might be assessed as <b>not</b> 'living apart' and it would be reasonable to include the partner's resources as the applicant's resources:	<ul style="list-style-type: none"> <li>▪ where a current separation is short (eg: up to 3 months) and temporary whether planned or not, such as holiday, business trip or hospitalisation and the couple do not consider themselves as 'separated'</li> <li>▪ where the couple regularly live apart for short periods (eg: one partner commutes to a distant workplace) but they maintain a common home or principal place of residence.</li> </ul>
Examples where a couple might be assessed as living apart and it would not be reasonable to include the partner's resources as the applicant's resources:	<ul style="list-style-type: none"> <li>▪ the time spent living in different places is long (eg: more than 3 months), whether planned or not, such as imprisonment or being taken into long term care</li> <li>▪ an agency, such as Work and Income, has made a similar assessment and concluded the couple is living apart (eg: a 'living alone allowance' is paid).</li> </ul> <p>In this situation, if there are still shared assets or liabilities, only the value of the applicant's share may be taken into account.</p>

Consider	Guidance
The applicant cannot access shared resources	<ul style="list-style-type: none"> <li>▪ There may be a situation where it would be unreasonable or impossible for the applicant to have access to a spouse or partner's resources.</li> <li>▪ For example, when the applicant is in a situation of domestic violence but continues to live with the abuser who controls the family resources.</li> <li>▪ The Grants Officer has the discretion to disregard those resources: <ul style="list-style-type: none"> <li>- for a civil/family case, by applying the <i>special circumstances</i> test in s9(2) and</li> <li>- under s8(5) for a criminal case, where the Agency must <i>have regard to</i> the applicant's income and disposable capital when determining whether the applicant has sufficient means.</li> </ul> </li> </ul> <p> An agreement between partners that contracts out of the property sharing provisions of the Property (Relationship) Act does not apply to a legal aid assessment.</p> <p>Go to step 8, <i>Income</i></p>

## Minor



Decisions about counting resources in an application in respect of a minor are guided by s13 of the Act and in Schedule 1.

Under s13, if an application is made on behalf of a minor, the person making the application may be liable for the *repayment* unless this is waived by the Agency. Therefore, the assessment of the financial circumstances of the person making the application is required for repayment rather than eligibility reasons.

If the applicant is a minor, the resources of parent(s) or other person with responsibility for the minor may be treated as the resources of the minor/applicant.

Step 4. The Grants Officer establishes whether:

- the minor is under 16 years or between 16 years and 20 years old in a civil/family matter
  - Go to step 5
- the minor is under 16 years or between 16 years and 20 years old in a criminal matter
  - Go to step 6

**Minor in a civil/family matter**

Step 5. The Grants Officer determines how to treat the resources of the other person/s in a civil/family matter.

If...	then...
<p>the minor is under 16 years old, <b>and</b></p> <p>(i) the minor and either parent have contrary interests in the matter of the proceedings (e.g.: they are opposing parties to the proceedings or have opposing interests in the outcome of the proceedings), or</p> <p>(ii) the parent is living apart from or does not have the day-to-day care responsibility, or</p> <p>(iii) the minor is supporting him/herself without financial assistance from the parent,</p>	<p>(i) the resources of the parents of a minor under 16 years are not treated as the minor/applicant's resources.</p> <p>(ii) those resources may be excluded from the assessment</p> <p>(iii) the resources of the parents may be excluded from the assessment.</p>
<p>there is any sum paid or payable under any agreement or court order to another person for the purpose of maintaining the applicant,</p>	<p>this may be treated as the minor/applicant's resources.</p>
<p>the minor is:</p> <ul style="list-style-type: none"> <li>▪ 16 years or over but under 20 <b>and</b></li> <li>▪ an applicant in a civil/family matter</li> </ul>	<p>the resources of the other person are treated as the minor/applicant's resources in the following situations:</p> <ul style="list-style-type: none"> <li>▪ there is a person under an agreement or court order who is liable to wholly or partly maintain the minor/applicant</li> <li>▪ there is a parent, foster parent or step parent with whom the minor/applicant is living</li> <li>▪ there is a sum paid or payable under any agreement or court order to another person for the purpose of maintaining the applicant.</li> </ul> <p>Go to step 8, <i>Income</i>.</p>

**Minor in a criminal matter**


Step 6. The Grants Officer determines how to treat the resources of the other person/s in a criminal matter.

If...	then...
<p>the minor is under 16 years and appears in a criminal court,</p>	<p>the resources of the parent (including foster parent or step parent) with whom the applicant is living are treated as the applicant's resources.</p>
<p>the minor is 16 years or over in a</p>	<p>the resources of the parent are not treated as the</p>

If...	then...
criminal matter,	minor/applicant's resources.
the minor is 16 years or over and is receiving significant support from his/her parents,	<p>the value of any payments, goods or services, transport or accommodation supplied by the parents are treated as the minor's income.</p> <p>This may be the case where the minor lives at home.</p> <p>These payments will be valued at \$120.00 in the assessment of the minor's income. This equates to the value of the Unemployment Benefit where the recipient is:</p> <ul style="list-style-type: none"> <li>▪ single</li> <li>▪ under 20 and</li> <li>▪ living with a parent.</li> </ul> <p>Go to step 8, <i>Income</i></p>

### Representative from a group

Step 7. The Grants Officer determines how to treat the resources of a representative from a group.

If...	then...
<p>the Grants Officer accepts an application from a representative on behalf of a group of people</p> <p> see '<i>Is this person an eligible applicant?</i>', in parts 4 and 6 of this manual</p>	<p>the financial assessment of the applicant is the same as for any applicant</p> <p><b>unless</b></p> <p>the applicant is only concerned with the matter in a representative, fiduciary or official capacity.</p>
<p>the applicant is only concerned with the matter in a representative, fiduciary or official capacity</p>	<p>the personal resources of the representative will <b>not</b> be taken into account in the financial assessment.</p> <p>However, there are some financial resources which the Grants Officer may consider as part of the financial assessment:</p> <ul style="list-style-type: none"> <li>▪ the value of the property or estate, or</li> <li>▪ the amount of the fund, out of which the representative/applicant is entitled to be indemnified, and</li> <li>▪ the resources of any person(s) who are beneficially interested.</li> </ul> <p>These resources are assessed to determine whether:</p> <ul style="list-style-type: none"> <li>▪ the financial thresholds relevant to the person</li> </ul>

If...	then...
	being represented are exceeded <i>and</i> <ul style="list-style-type: none"> <li>▪ it appears the person(s) being represented could fund the matter themselves.</li> </ul>
The Grants Officer may request assistance from a specialist adviser to sort through the information on the resources of the people being represented. Go to step 8, <i>Income</i>	

## The type and value of income

### Value of Income



The applicant's gross annual income is used in the eligibility and repayment decisions. Gross annual income is the value before any deductions are made, such as tax, child support payments, and direct debit payments.

### Source of income



The definition of income is found in Schedule 1 cl 2(b). It is linked to the meaning of income given in s3(1) (a) to (e) of the Social Security Act 1964 (SSA) (note – the definition of income for legal aid purposes does not apply to all sections of s3(1) in the SSA).

### Payments not counted as income

Only some Work and Income payments are excluded from the assessment of income and these are specified in Schedule 1 cl 2(c).

Step 8. The Grants Officer excludes the following payments from their assessment of gross annual income.

Type of payment	These are ...
Payments under Part 1 of the Social Security Act 1964, as specified in schedule 1 to the Legal Services Act 2000	<ul style="list-style-type: none"> <li>▪ Orphan's benefit</li> <li>▪ Unsupported child's benefit</li> <li>▪ Child disability allowance</li> <li>▪ Emergency benefit</li> <li>▪ Emergency maintenance allowance</li> <li>▪ Accommodation supplement</li> <li>▪ Special benefit</li> <li>▪ Disability allowance</li> </ul>
Payments for special assistance approved by Minister under welfare programme SSA 124(1)(d)	Some of the more common payments: <ul style="list-style-type: none"> <li>▪ Away from Home Allowance</li> <li>▪ Home Help Programme</li> </ul>

Type of payment	These are ...
	<ul style="list-style-type: none"> <li>▪ New Employment Transition Grant</li> <li>▪ Pathways Payment</li> <li>▪ Recoverable Assistance Programme</li> <li>▪ Seasonal Work Assistance Programme.</li> </ul> <p>Go to step 9, <i>Include benefits</i></p>

### Payments counted as income

Step 9. The Grants Officer includes the following payments in their assessment of gross annual income.

Type of payment	These are ...
<p>Any benefit, grant, allowance or concession that is payable under Part 1 of the Social Security Act 1964 not listed in step 8 above. This includes a payment under the:</p> <ul style="list-style-type: none"> <li>▪ War Pensions Act 1954,</li> <li>▪ NZ Superannuation Act 2001 and</li> <li>▪ Social Welfare (Transitional Provisions) Act 1990 (also referring to superannuation and veteran payments).</li> </ul>	<p>Benefits listed in Part 1:</p> <ul style="list-style-type: none"> <li>▪ National Superannuation</li> <li>▪ Widows Benefit</li> <li>▪ Domestic Purposes Benefit</li> <li>▪ Invalids Benefit</li> <li>▪ Sickness Benefit</li> <li>▪ Unemployment Benefit</li> <li>▪ Independent Youth Benefit</li> <li>▪ and Friendly Society payments</li> </ul>
<p>Any tax credit or payment made under Income Tax Acts 2004, 1994, 1976 of:</p>	<ul style="list-style-type: none"> <li>▪ Family support (whether paid through Work and Income or Inland Revenue – note that if the applicant receives benefit, the appropriate Family Support payments will be added automatically by the Means Calculator)</li> <li>▪ Family Plus (child tax credit, parental tax credit, family tax credit [guaranteed minimum family tax credit]). If the parental tax credit has been received as a lump sum payment instead of regular instalments, only the portion of the sum relating to the 12-month period for income assessment is to be included</li> </ul>
<p>All income from any other source, before tax</p>	<ul style="list-style-type: none"> <li>▪ regular payments from salary, wages, interest/ dividends</li> <li>▪ periodic payments from any other sources including income-related insurance payments, pension or superannuation payments including payments from</li> </ul>

Type of payment	These are ...
	<p>overseas schemes (see below for guidance on this), ACC weekly compensation payments, student allowance</p> <ul style="list-style-type: none"> <li>▪ board payments from the 3rd and additional boarders (payments from the 1st and 2nd boarders are considered to be recovering the costs of having boarders),</li> <li>▪ rent (but exclude the usual costs of owning and maintaining the property such as rates, insurance, mortgage payments, repairs)</li> <li>▪ lump sum or one-off payments from seasonal layoff, redundancy, parental leave, life insurance, disability insurance, (or any portion of the payment that relates to the 12 month income period used)</li> <li>▪ the value of any goods or services, transport or accommodation supplied on a regular basis to the person (see below for guidance on this).</li> </ul>
Payments for dependent children	<ul style="list-style-type: none"> <li>▪ Child Support,</li> <li>▪ Family Support or</li> <li>▪ money received to care for child under CYPF Act 1989</li> </ul>
Working for Families Tax Credits	<p>not taxable.</p> <p>They are gross payments and you should select <i>Gross</i> when entering these payments in the Means Calculator.</p>
Any rental income derived from Maori land or interests in Maori land.	Maori customary land or Maori freehold land.
	Go to step 10, <i>Type of income</i>

### Making a decision about income

Step 10. The Grants Officer decides what type of income may be included.



There are Help buttons in the Means Calculator which give more information and guidance to help you make a decision about what is or is not counted as income.

Consider	Guidance
Shares, investments etc	<ul style="list-style-type: none"> <li>▪ Funds such as investment shares or term deposits are counted as capital.</li> <li>▪ Any interest or dividends paid out are counted as</li> </ul>

Consider	Guidance
	income.
Insurance, pension or retirement schemes	<ul style="list-style-type: none"> <li>• Payments from a insurance / retirement schemes are counted as income.</li> <li>▪ The funds in the scheme are counted as an asset in the assessment of Capital – see Step 18</li> </ul>
Periodic or regular payments not on the lists above	<p>Periodic payments are counted as income if they</p> <ul style="list-style-type: none"> <li>▪ have "<i>income-related purposes or used by the person for income-related purposes</i>" (SSA s3(1(b)) – that is, they are payments to fully or partially replace (instead of) earned income, and are</li> <li>▪ payments received periodically or regularly.</li> </ul> <p>For example:</p> <ul style="list-style-type: none"> <li>▪ ACC weekly compensation payments <i>are</i> income related because they replace a person's earned income and are regular payments.</li> <li>▪ ACC independence allowances or ACC payments for treatment or rehabilitation are <i>not</i> counted as income as they are specific to a disability or impairment (like a disability allowance) regardless of the source of a person's main income for normal daily living</li> </ul>
Goods and services, transport or accommodation supplied on regular basis	<p>The guidelines provided by Work and Income<sup>1</sup> explain when the (estimated) value of goods or services regularly received is counted as income.</p> <p>This is when:</p> <ul style="list-style-type: none"> <li>▪ it maintains the applicant or a member of the family (for example, a former partner regularly pays essential living costs such as rent or clothing)</li> <li>▪ it purchases goods or services which would commonly be paid from a applicant's income (for example a grandparent regularly pays the cost of child care for the applicant, or transport to the care)</li> <li>▪ it enables the applicant to make payments they are liable for and would usually be paid out of an applicant's income (for example, if someone else regularly pays the phone bill or car registration).</li> </ul>
Benefit and earned income	If the applicant indicates on the application form

<sup>1</sup> [http://www.workandincome.govt.nz/manuals-and-procedures/income\\_support/core\\_policy/index](http://www.workandincome.govt.nz/manuals-and-procedures/income_support/core_policy/index).

Consider	Guidance
	<p>he/she is receiving both a benefit and earned income, check the amount of abatement (deduction) on the benefit.</p> <p>Earning income while receiving a benefit is permitted but the full value of the benefit should not be counted as income.</p> <p>See the <i>Benefit abatement table</i> below.</p> <ul style="list-style-type: none"> <li>▪ Up to \$20 a week more than these thresholds may be earned if the person has to pay for childcare because he/she is working.</li> <li>▪ A statement on Confirmation of Benefit Income from Work and Income will confirm the amount of abatement.</li> </ul>

#### Benefit abatement table

If annual gross earned income is	The deduction rate is
Up to \$4160 (up to \$80 a week)	No change to the benefit
\$4161-\$9360 (\$81-\$180 a week)	30c off for each \$1 of income from \$4161 to \$9360
\$9361 or more (\$181 or more a week)	70c off for each \$1 of income from \$9361

Go to step 11, *Verify income*.

### Supporting documentation and verification for income



The Grants Officer will assume that the information received in the application process (form plus supporting documents) is accurate and complete. Additional information or verification of income should only be requested where:

- it is Agency procedure or
- reasonable doubts exist as to the completeness and accuracy of the information.

#### Verification



Verification means to sight evidence which proves the accuracy of the applicant's statement. It is not the same as requiring a supporting document which gives additional information so that a decision can be made.

Step 11. The Grants Officer verifies the applicant's income.

Step	Action
Verify the main source of income.	<p>One of the following verifying documents would be acceptable as verification:</p> <ul style="list-style-type: none"> <li>▪ a recent pay slip,</li> <li>▪ a letter from the employer</li> <li>▪ a bank statement showing salary/wage paid into the account</li> <li>▪ an IRD statement</li> <li>▪ or annual accounts if the applicant is self employed, a partner in a business or director of a company.</li> </ul> <p>These documents do not have to show income for the last 12 months.</p>
<p>If the applicant:</p> <ul style="list-style-type: none"> <li>▪ has been in their current job for less than a full year, and</li> <li>▪ is unable to easily get verification of income from the preceding job,</li> </ul>	<p>The Grants Officer may accept the applicant's statement of income received for that period unless there is reason to doubt its accuracy.</p> <p>If the Grants Officer has reasonable doubts, they may continue to assess the application while waiting for verification.</p>
The Grants Officer will request verification of benefit income only if they have reasonable doubts about the accuracy of the income statement made by the applicant.	<p>The Grants Officer has two ways of verifying benefit income:</p> <ul style="list-style-type: none"> <li>▪ through the compliance check completed by Work and Income and sent the Agency</li> <li>▪ request the applicant to provide a Confirmation of Benefit Income from Work and Income.</li> </ul> <p>Go to step 12, <i>Additional information</i></p>
Income from secondary jobs	<p>Verification is not required</p> <p>The Grants Officer may accept the applicant's statement of income received for that period unless there is reason to doubt its accuracy.</p>

## Additional information



The Grants Officer must have sound reasons for requiring more documents.

Step 12. Determine whether to request additional information.

If...	then...
the applicant has earned income and benefit income simultaneously,	more information may be needed on the rate of benefit abatement to ensure the applicant's income is not over-estimated.  See the <i>Benefit abatement rate table</i> above
the applicant indicates that he/she receives income from a trust,	additional information about the trust may be requested if this has not been submitted with the application form.  Go to step 13, <i>Calculate income</i> .

## The gross income calculation

Step 13. The Grants Officer calculates gross annual income.

- This is done by the Means Calculator.
- The calculation involves totalling all sources of income for the selected 12 month period, inclusive of tax paid on that income.
- Go to step 14 *Further information*.

## The type and value of capital

### Introduction

The applicant's capital is defined by in Schedule 1 of the Act. The Grants Officer calculates capital by adding the value of assets and deducting the value of debts.

There is a difference in the calculation of disposable capital for an eligibility decision and the calculation of capital for a repayment decision. This is described later in this section. Both draw on the same information on assets and debts.

### Assessing the value of an asset



Regulation 8 states how the Agency will set a value on the assets. The Agency must set the value of an asset at:

- *the fair market value at the date of the application for legal aid and*
- *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.*

Any debt against a specific asset is covered in the section below. The Grants Officer will consider the market value of the asset first.

## Property



For most applicants, 'property' means their own house. Most applicants for legal aid will be able to state the current market value of their house and this should be accepted. However, the Grants Officer may request further information if necessary.

Step 14. The Grants Officer determines whether to request further information.

If...	then...
it is not clear from the application form <ul style="list-style-type: none"> <li>▪ whether the applicant has a legal or equitable share in the property along with other person(s) and</li> <li>▪ what the value of that share is,</li> </ul>	the Grants Officer may request additional valuation information to determine the value to ascribe to the applicant's share.
the value of the outstanding debt (mortgage) appears very high in relation to the value of the property as declared by the applicant which suggests that the statement from the applicant on market value may not be accurate or up-to-date,  <b>Or</b> the Grants Officer has other sound reason(s) to require evidence of market value,	the Grants Officer may accept the following: <ul style="list-style-type: none"> <li>▪ the most recent valuation if the Quotable Value of a house is updated annually,</li> <li>▪ a more recent (less than one year old) if valuations are done every three years otherwise an updated valuation from Quotable Value or from a registered valuer or real estate agent. As there may be a financial cost to the applicant in getting a new valuation, the Grants Officer will only pursue this after the applicant has had a chance to re-evaluate their assessment or provide other information such as recent house sales in the local area to support the assessment of market value.</li> </ul> Go to step 15, <i>Shares, etc.</i>

## Cash, shares, term deposits, etc

Step 15. The Grants Officer assesses the value of cash, shares, term deposits, etc

- If the applicant has money in a bank account, the actual value is used in the assessment
- For other 'near cash' assets such as investments, shares, bonds, debentures, the fair market value will be the current actual selling price.
- If the shares are in a private (ie. not listed) company, the applicant will need to demonstrate how their market value was determined.
- Go to step 16, *Personal items.*

## Items for personal, domestic/household or work use



Note that when assessing of the value of personal, household or work items, the market value is what the applicant could reasonably expect to sell the asset for. The market value

differs from the new value (e.g.: current retail price) or replacement value (e.g.: insured value). For most personal and domestic items, the market value will be **considerably** less than the new or replacement value.

Step 16. The Grants Officer assesses the value of personal, household or work items.

- vehicles, the fair market value will be the likely selling price in the current market, as assessed by the applicant
- household furniture, appliances and personal clothing fair market value will be the likely selling price in the current market; a default value of \$1,000 as a total value of all personal and household items is used unless the applicant indicates on the application form that he/she has an item of greater value or the total value is less than \$1,000.
- tools of trade fair market value will be the likely selling price in the current market as assessed by the applicant.
- Go to step 17, *Interest in a trust*.

### Trusts or other fund

Regulation 8 (4) requires the Agency to assess the interest an applicant may have in a fund 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 the 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.*

Regulation 8(5) says that the *Agency may treat all or part of the assets and income of a trust as assets and income of the applicant's regardless of the interest of any other person in the trust.*



The applicant must complete the Trusts form.

The Trusts form can be downloaded from the Agency's website [www.lsa.govt.nz/ListedProvider/forms/other\\_forms](http://www.lsa.govt.nz/ListedProvider/forms/other_forms)


Where a trust is involved, most frequently the applicant will be a beneficiary of a family trust (so trust assets may be taken into account in the capital assessment) rather than receiving income from a trust (which will be included in the income assessment).

Step 17. The Grants Officer assesses the interest the applicant or aided person has in a Trust.

Step	Guidance
Request a copy of the trust deed	Particularly look at the trust deed to see whether the LAP is: <ul style="list-style-type: none"> <li>▪ the settlor,</li> </ul>

Step	Guidance
	<ul style="list-style-type: none"> <li>▪ a trustee,</li> <li>▪ a beneficiary and/or</li> <li>▪ the appointer of the new trustees.</li> </ul> <p>If so, then it is reasonable to conclude that the aided person is in control of, or at least can significantly influence decisions of the trust</p>
Obtain copies of financial statements from the previous 2 years.	These accounts show whether the aided person is receiving any income from the trust and whether there is any debt owing by the trust to the aided person arising from the original transfer of property by the aided person to the trust.
Request information from the provider as to whether there is any debt owing by the trust to the aided person.	This debt commonly arises from the transfer of property by the aided person as settlor to the trust. The value of such property transferred then converts to a debt owing by the trust to the settlor, who then commonly deals with that debt by way of annual gifting at the rate of \$27,000 per year. Until that gifting program is finished, the debt remains an asset in the hands of the aided person. This asset is usually “overlooked” by the applicant in their Form 6.
If the Grants Officer determines that there is no equity in the trust and/or there is no debt owing to the aided person by the trust.	No further action about trusts will be taken. Go to step 18, <i>Insurance, superannuation</i> .
If the Grants Officer determines that there is equity in the trust and/or there is debt owing to the aided person by the trust.	<p>The relevant sections of the Act and the regulations are considered:</p> <ul style="list-style-type: none"> <li>▪ section 4 (1) of the Act defines disposable capital as “that person's disposable capital as described in the schedule”.</li> <li>▪ schedule 1 (3) (2) refers to assets of “that person” (the legally aided person) and does not specifically refer to assets owned by a trust.</li> <li>▪ regulation 8(3): “the value of any interest in a reversion or remainder (whether legal or equitable) in any property, or in a trust or other fund (whether the applicant's interest is held solely, jointly, or in common, and whether it is vested or contingent), must be computed in manner that is both fair and reasonable.”</li> </ul>


Step	Guidance
If the trust has large equity, which could be mortgaged to obtain money for legal fees, then the Grants Officer may assess the value of the trust's assets as a contingent capital interest of the legally aided person.	<p>The Grants Officer will consider:</p> <ul style="list-style-type: none"> <li>▪ The trust property concerned was originally owned by the legally aided person</li> <li>▪ The degree of the involvement of the legally aided person in the trust</li> <li>▪ The number of beneficiaries</li> <li>▪ Size of equitable value of trust property.</li> </ul> <p>Go to step 18, <i>Insurance, superannuation</i>.</p>

 You may also request a recommendation from a specialist adviser to help you assess whether, and to what value, a trust may be taken into account as the applicant's asset.

### Insurance, superannuation, etc

Step 18. The Grants Officer assesses the value of insurance, superannuation and other schemes.

- The fair market value of assets such as insurance (an income-related insurance such as loss of job insurance) or superannuation policies will be at the current value rather than a future value that could be realised when the policy matures.
- The value of an insurance policy may only be counted as an asset if the applicant is able to access the funds.
- For example, if the insurance policy has an 'escape' clause for the early release of funds that says 'funds may be released if the policy holder is in financial hardship', it may be reasonable to expect the applicant to access those funds (to pay for their own legal representation, to count them as an asset in the financial assessment or to make legal aid repayments.)
- Go to step 19, *Luxury items*.

 Guidance on how to assess the proposed Kiwi Saver scheme will be provided when the final details of the scheme are known.

### 'Luxury' or similar valuable items

Step 19. The Grants Officer assesses the value of luxury or similar items.

- The fair market value of special items such as luxury or antique items, collectables, specialist motor vehicles will be set at the value given in a valuation report provided for the specific item.
- The Grants Officer may ask the applicant to provide a copy of the report.
- The value of such items is less likely to vary over short periods, so a valuation up to two or three years old may be accepted.
- Go to step 20, *Businesses*.

## Businesses

Step 20. The Grants Officer assesses the value of the applicant's business.

- The fair market value of a business will be based on the latest annual business accounts or the owner's equity in the business.
- Regulation 8(7) clarifies further situations when the applicant may be treated as the sole owner or partner in a business and the resources counted as the applicant's assets.
- The applicant will need to provide recent documentation to verify the current value. The Grants Officer may request assistance from a specialist adviser to make these assessments.
- Go to step 21 *Value of debts*.

## Assessing the value of debts

Step 21. The Grants Officer assesses the value of the applicant's debts.

- The debts most likely to be disclosed in applications for legal aid are:
  - mortgage on a family home
  - loan or hire-purchase for a car or household items
  - credit card debt, including store card debt
  - student loan
  - repayments to a government agency such as Work and Income, Inland Revenue, Legal Services Agency
  - loans from family or friends.
- The Grants Officer can accept the applicant's statements on the application form on the value of debt in most cases without verification or further information.
- Further information and explanation about a debt may be requested in some situations, for example:
  - if regular payments such as child support are claimed as debt. Normally these count as regular expenses rather than a debt.
  - if the debt on an asset is exceptionally high in relation to the value given for the asset. One of the values may be inaccurate.
- Go to step 22, *Contingent liabilities*.

## Contingent liabilities

Step 22. The Grants Officer assesses the value of contingent liabilities.

- A contingent liability is a potential future expense that arises out of an obligation from a past event, which becomes payable only if the future event happens, and is outside the control of the applicant.
- Include any contingent liability that meets this definition as a debt if it is liable to be called on in the next 6 months.
- An example of a contingent liability may be if the legal aid applicant has acted as a loan guarantor. The applicant will not be liable for the loan unless the person taking the loan defaults on payment.

- Costs that arise in the normal course of day-to-day life (e.g.: mortgage payments, rates) **are not** contingent liabilities. They are future liabilities in that they will be met out of future income, but they do not depend on (are not contingent on) the outcome of a future event. Such costs are in the control of the applicant, are predictable and knowingly accepted by the person as a future cost.
- Go to step 23 *Verification*.

## Supporting documentation and verification of assets and liabilities

The Grants Officer will assume that the information received in the application process (form plus supporting documents) is accurate and complete. Additional information or verification of assets or liabilities should only be requested where:

- it is Agency procedure or
- reasonable doubts exist as to the completeness and accuracy of the information.

### Verification



Verification:

- of minor assets is not required – the applicant's statement on the application form is sufficient
- of debts is not required – the applicant's statement on the application form is sufficient
- of a key asset such as property or luxury/antique/collectable items **is** required.

Step 23. The Grants Officer determines whether to request verification.

- If the Grants Officer considers that:
  - the value of the asset is significant, and
  - may be used to secure a debt
- Then they may require the applicant to provide verification of the ownership and value of the asset.
- Go to step 24, *Additional information*.

### Additional information

Step 24. The Grants Officer determines whether additional information is required

- If the Grants Officer needs more information than the application form provides, they may request supporting documentation.
- If the applicant indicates that he/she receives money or benefits from a trust, the Trusts form should be completed.
- Supporting documents with information about the trusts may need to be enclosed or submitted on request.
- Go to step 25 *Capital for eligibility*.

# Calculating disposable capital for eligibility and capital for repayment

## Calculating disposable capital for the eligibility decision




Schedule 1, clause (3)(1) sets the procedure for determining disposable capital:

- total assets
- minus amount of debts secured against those assets
- minus allowable deductions of
  - equity in a home (property which is the applicant's principal place of residence) up to \$80,000 (Reg.7)
  - value of interest in the applicant's car (if used principally for domestic purposes)
  - value of the applicant's household furniture, household appliances, personal clothing and tools of trade
  - the amount of contingent liabilities that may mature within the next 6 months
  - the amount of actual debts (other than the secured debts noted above)
  - the value of subject matter of the proceedings unless the Agency determines that a portion of that value should be included in the assessment of the applicant's total assets.

The outcome of this assessment is *disposable capital*, which is used to make an eligibility decision.

### Doing the calculation

Step 25. The Grants Officer calculates disposable capital for the eligibility decision.

Step	Guidance
Assess the applicant's equity in their home.	Take the market value and deduct the mortgage owing. The result is the value of equity.
Assess the value of the interest on a second vehicle in the applicant's household.	The Grants Officer will <b>only</b> deduct this value if the applicant can demonstrate that it is also necessary for domestic purposes.  <b>Note</b> - 'value of interest' means the market value of the vehicle minus the debt owing on it.
Assess the proportion of the value of an asset (or debt) that is the subject of proceedings.	<ul style="list-style-type: none"> <li>▪ confirm whether the property is the subject of dispute, then</li> <li>▪ decide whether a value should be included in the assessment</li> </ul> <p>If the proceedings deal with relationship property and it is highly likely that the</p>

Step	Guidance
	applicant will receive/retain 50%, then this portion of the value should be included in the disposable capital assessment.
	Go to step 26, <i>Capital for repayment</i>

## Calculating capital for the repayment decision

Step 26. The Grants Officer calculates capital for the repayment decision.


- For the repayment decision, the amount of capital is the person's total assets:
  - minus debts secured against those assets and
  - minus actual debts other than those secured.
- This means that the deductions for house equity and the value of the person's motor vehicle, household furniture and appliances, clothing and tools of trade do not apply in the setting of a repayment.
- Go to step 27, *Intentionally disposed of*.

## Whether resources have been intentionally disposed of



Regulation 9 allows the Agency to take into account resources that the applicant has intentionally disposed of *in order to make him or herself eligible for legal aid or reduce repayments due to the Agency*.

Step 27. The Grants Officer determines whether resources have been intentionally disposed of.

Step	Action
If it is clear, suspected or alleged that resources have been disposed of.	<p>The Grants Officer will investigate and decide:</p> <ul style="list-style-type: none"> <li>▪ whether this was done intentionally, and</li> <li>▪ if 'intention' is determined, whether and what resources are to be included in the financial assessment for eligibility and/or repayment.</li> </ul> <p> Refer to <i>Investigating Allegations of Ineligibility</i> in Part 2 <b>File management and general policies</b> in this manual.</p>

Step	Action
In all cases the Grants Officer will complete the following actions:	<ul style="list-style-type: none"> <li>▪ identify the resources in question (most likely an asset rather than income payments)</li> <li>▪ seek confirmation that they were disposed of (if not declared at the time of the application) and that this was within the previous 12 months</li> <li>▪ request an explanation as to the purpose and timing of disposal</li> <li>▪ assess the explanation</li> <li>▪ make a decision on intention.</li> </ul>
Identify that the resources in question have been disposed of.	<p>Disposed resources are those which:</p> <ul style="list-style-type: none"> <li>▪ the applicant has directly or indirectly disposed of</li> <li>▪ the applicant has transferred to another person, or</li> <li>▪ the applicant has converted into a type of resource that the Agency would wholly or partly disregard in the assessment of financial circumstances (e.g.: new home, family car).</li> </ul>
Determine whether the resources in question have <i>recently</i> been disposed of.	<p>Recently disposed of refers to resources that have been:</p> <ul style="list-style-type: none"> <li>▪ sold,</li> <li>▪ transferred ownership,</li> <li>▪ transferred responsibility for,</li> <li>▪ gifted or given away.</li> </ul> <p>Do not include resources that have been:</p> <ul style="list-style-type: none"> <li>▪ disposed of outside the assessment period of twelve months or</li> <li>▪ disposed of prior to the period in which the matter or circumstances resulting in proceedings existed.</li> </ul>

Step	Action
Decide whether the resources have been <i>directly</i> or <i>indirectly</i> disposed of.	<p>Resources directly disposed of will be those disposed of:</p> <ul style="list-style-type: none"> <li>▪ by the applicant and/or</li> <li>▪ the financially associated person (e.g.: partner).</li> </ul> <p>Indirectly disposed of resources:</p> <ul style="list-style-type: none"> <li>▪ are those disposed of by someone other than the applicant or financially associated person, on behalf of or under instruction of the applicant.</li> <li>▪ This might include resources disposed of by a trust or a business associated with the applicant.</li> </ul> <p>Go to step 28, <i>Discretion</i></p>

### Discretion to disregard resources disposed of

The Grants Officer may determine that the resources have been disposed of intentionally. However, they have the discretion not to include these (wholly or partly) in the financial assessment in certain circumstances.

Step 28. The Grants Officer determines whether they can disregard the resources disposed of.

Where	Guidance
<p>the resources were:</p> <ul style="list-style-type: none"> <li>▪ of limited value (e.g.: up to \$500) and</li> <li>▪ something the applicant would ordinarily have given away, for example, cash to a family member as a birthday present.</li> </ul>	<p>The Grants Officer can disregard the resources disposed of.</p>
<p>the value of the resource was minimal and, in effect, had no impact on the eligibility or repayment decision. For example if the total value of a capital resource was less than</p> <ul style="list-style-type: none"> <li>▪ \$1,500 (for a single applicant) or</li> <li>▪ \$2,000 (for other applicants)</li> </ul>	

Where	Guidance
<p>the resources were sold in order to acquire other assets that would normally be excluded from the eligibility assessment, such as:</p> <ul style="list-style-type: none"> <li>▪ purchasing property to be used as the home,</li> <li>▪ purchasing a household item, personal clothing or tools of trade, or</li> <li>▪ purchasing a vehicle to be used for domestic purposes</li> </ul>	<p>The Grants Officer can disregard the resources disposed of, provided that:</p> <ul style="list-style-type: none"> <li>▪ it was a necessary purchase and</li> <li>▪ the value of the purchase was an average cost that would likely be paid by any person in a similar situation.</li> </ul> <p>End of financial assessment process.</p>
<p>If the Grants Officer considers that the resources disposed of cannot be disregarded,</p>	<p>then the resources are taken into account in the eligibility and repayment decisions, and are assessed in the same way as any income or capital.</p> <p>End of financial assessment process.</p>

## Can a repayment be imposed on a bankrupt applicant?

### Policy

The Agency may establish a debt as a result of a MAPI assessment, given that in effect, a debt will be established based on actual earnings.

However, the Agency will not establish a debt based on the bankrupt applicant's capital resources. This is because the Agency does not have any control over how the Official Assignee may value or dispose of the asset. The decisions of the Official Assignee involve discretion as to the value of the asset and what the bankrupt person can retain.