



Part 17 – Legal Services Regulations 2006

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Legal Services Regulations 2006

(unofficial consolidated version as at 1 November 2008)

<i>(Statutory Regulations:</i>	<i>SR 2006/180</i>
<i>Order in Council:</i>	<i>3 July 2006</i>
<i>Gazetted:</i>	<i>6 July 2006</i>
<i>Commencement:</i>	<i>1 March 2007</i>
<i>Amendments:</i>	<i>SR 2006/355)</i>

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 3rd day of July 2006

Present:

Her Excellency the Governor-General in Council

Pursuant to section 113 of the Legal Services Act 2000, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

USERS SHOULD NOTE:

The regulatory consolidations in this document:

- (a) are unofficial
- (b) were compiled in October 2008
- (c) present the regulations as they are anticipated to read on 1 November 2008.

It includes previous regulations and schedules as they read prior to the Legal Services Amendment Regulations 2008.

If more history or amendment explanations are required, please refer to the official version of the principal Regulations and subsequent Amendment Regulations.

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Regulations

1 Title

These regulations are the Legal Services Regulations 2006.

2 Commencement

These regulations come into force on 1 March 2007.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Legal Services Act 2000

applicant means a person who has applied for or been granted legal aid.

4 Application

These regulations apply to applications for legal aid made on or after 1 March 2007.

Financial eligibility for legal aid

[5 Legal aid for civil matters: maximum levels of income

- (1) The maximum levels of income for the purposes of determining an applicant's eligibility for legal aid in respect of a civil matter are—
 - (a) \$22,366 per year for a single applicant;
 - (b) \$35,420 per year for an applicant with—
 - (i) a spouse or partner; or
 - (ii) 1 dependent child;
 - (c) \$50,934 per year for an applicant with—
 - (i) a spouse or partner, and 1 dependent child; or
 - (ii) 2 dependent children;
 - (d) \$57,880 per year for an applicant with—
 - (i) a spouse or partner, and 2 dependent children; or
 - (ii) 3 dependent children;
 - (e) \$64,678 per year for an applicant with—
 - (i) a spouse or partner, and 3 dependent children; or
 - (ii) 4 dependent children;
 - (f) \$72,302 per year for an applicant with—
 - (i) a spouse or partner, and 4 dependent children; or
 - (ii) 5 dependent children.
- (2) If an applicant has more than 5 dependent children, or has a spouse or partner and more than 4 dependent children, the maximum level of income for that applicant is calculated by adding to the amount specified in subclause (1)(f) a further \$6,689 for each additional child.]

Amendments — Regulation 5

Regulation 5 was substituted on 1 November 2008 by reg 4 of the Legal Services Amendment Regulations 2008.

6 Legal aid for civil matters: maximum levels of disposable capital

- (1) The maximum level of disposable capital for the purposes of determining an applicant's eligibility for legal aid in respect of a civil matter is \$3,500.
- (2) If the applicant has a spouse or partner, or 1 or more dependent children, the maximum level of disposable capital for that applicant is calculated by adding an allowance of \$1,500 to the amount specified in subclause (1).

Calculation of resources

7 Determining disposable capital: home equity allowance

The allowance for the purpose of clause 3(1)(a) of Schedule 1 of the Act is \$80,000.

8 Determining capital and disposable capital: valuation of assets

- (1) This regulation applies for the purposes of valuing—
 - (a) an applicant's capital in accordance with clause 1 of Schedule 1 of the Act; and
 - (b) an applicant's disposable capital in accordance with clause 3 of that schedule.
- (2) The value of the assets is their fair market value at the date of the application for legal aid.
- (3) 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.
- (4) Any interest in any trust or other fund (whether the applicant's interest is held solely, jointly, or in common, and whether it is vested or contingent), or any benefit that the applicant might receive in connection with any trust (for example, a discretionary trust), must be assessed 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 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.
- (5) For the purposes of subclause (4), the Agency may treat all or part of the assets and income of a trust as assets and income of the applicant regardless of the interest of any other person in the trust.
- (6) If the applicant, or a person whose resources are to be treated as the applicant's resources, is under a contingent liability under an enactment or instrument to pay a sum, then, the Agency must make an allowance for any amount that is reasonably likely to become payable within 6 months of the date of the application for legal aid.
- (7) If, in the opinion of the Agency, the applicant, or a person whose resources are to be treated as the applicant's resources, stands in relation to a company in a position analogous to that of sole owner or partner in the business of that company, the Agency may, instead of ascertaining the value of the person's shares in the company, treat the person as if he or she were the sole owner or partner, and compute the amount of his or her capital in respect of that asset accordingly.

9 Resources that have been disposed of

- (1) This regulation applies to any resources that an applicant has disposed of (whether directly or indirectly) in order to become eligible for legal aid, or to reduce or avoid repayments due to the Agency.
- (2) The Agency may include in the applicant's resources the resources referred to in subclause (1) when calculating the applicant's income, disposable capital, or capital for the purposes of determining the applicant's eligibility for legal aid or the repayment payable by the applicant.
- (3) The resources referred to in subclause (1) include—
 - (a) any resources that the applicant has transferred to another person; and
 - (b) any resources that the applicant has converted into resources that would be wholly or partly disregarded under the Act or these regulations.

Prescribed repayment amount

10 Prescribed repayment amount

For the purposes of sections 17 and 18 of the Act, the prescribed repayment amount is the total of—

- (a) the maximum amount payable based on capital determined under regulation 11; and
- (b) the maximum amount payable based on income determined under regulation 12.

11 Maximum amount payable based on capital

- (1) The maximum amount payable based on capital is the amount set out in the first column of the table in Schedule 1 that corresponds to the capital thresholds—
 - (a) set out in the applicable column of the table; and
 - (b) that apply to the applicant's capital at the time that the grant is first approved.
- (2) If the applicant's capital exceeds the capital thresholds, the maximum amount payable based on capital is the total of—
 - (a) the highest maximum amount set out in the first column; and
 - (b) all of the applicant's capital that exceeds the highest capital threshold amount set out in the applicable column.

12 Maximum amount payable based on income

- (1) The maximum amount payable based on income is the amount set out in the first column of the relevant table in Schedule 2 that corresponds to the income thresholds—
 - (a) set out in the applicable column of the table; and
 - (b) that apply in respect of the applicant's income at the time that the grant is first approved.
- (2) If the applicant's income exceeds the income thresholds, the maximum amount payable based on income is the total of—
 - (a) the highest maximum amount set out in the first column; and
 - (b) the total difference between—
 - (i) the applicant's income; and
 - (ii) the highest income threshold amount set out in the applicable column.

Debts due to Agency

13 Fees and expenses associated with charges

- (1) An aided person must reimburse the Agency for any fees and expenses reasonably incurred by the Agency—
 - (a) in preparing an agreement under section 31(3) of the Act relating to a charge; and
 - (b) in registering a charge, whether the charge arises from an agreement made under section 31(3) of the Act or arises under section 32 of the Act.
- (2) If the aided person is not reasonably able to pay the fees and expenses as they arise, they may be added to, and recovered as part of the amount payable under, the charge.

14 Rate of interest on unpaid legal aid debt

The rate of interest for the purposes of section 35A of the Act is 6.75% per annum.

Victims' claims proceedings

15 Maximum grant to be specified for grants of legal aid

For the purposes of section 20(4) of the Act, the maximum grant to be specified for every grant of legal aid in respect of victims' claims proceedings is the following number of hours of legal services from a listed provider and at the applicable hourly rate set by the Agency:

- (a) 4 hours to prepare written material (which may include a request to hear oral submissions) to be put before the Tribunal determining the relevant claim;
- (b) if that Tribunal agrees to hear oral submissions from the parties (or from their representatives),—
 - (i) 2 hours to prepare those submissions; and
 - (ii) the hours or parts of hours necessary to present those submissions or to otherwise attend hearings agreed to under section 38 of the Prisoners' and Victims' Claims Act 2005.

Applications in respect of minors and others

16 Application by minors

An application for legal aid in respect of a civil matter for a person aged under 16 must be made by—

- (a) either of the person's parents; or
- (b) the person's guardian; or
- (c) a person who has the role of providing the day-to-day care for, or custody of, the person.

17 Application by persons incapable of completing application because of mental or physical infirmity

An application for legal aid in respect of a civil matter for a person who, by reason of mental or physical infirmity, is incapable of completing an application for legal aid may be made on behalf of the person by any responsible person (including an officer of Public Trust) with sufficient knowledge of the applicant's affairs.

18 Application by non-residents

- (1) An application for legal aid by a person who is not resident in New Zealand (a **non-resident**) may be made by the applicant's lawyer or other person authorised by the applicant.
- (2) Despite subclause (1), the statement of financial means required by section 12(1)(b) of the Act to be included in the application must be completed by the non-resident personally (unless regulation 16 or 17 applies).
- (3) A person signing an application on behalf of a non-resident applicant must state in the application that the applicant has not signed it personally because he or she is not in New Zealand.

Revocation and savings

19 Revocation and savings

- (1) The Legal Services Regulations 2000 (SR 2000/281) are revoked.
- (2) Despite subclause (1), applications for legal aid or grants of legal aid made before 1 March 2007 must be determined as if the Legal Services Regulations 2000 were not revoked.

Schedule 1

r 11

Maximum amount payable based on capital

Maximum amount payable based on capital (\$)	Capital thresholds for single applicants without children (\$)	Capital thresholds for all other applicants (\$)
0	0–1,500	0–2,000
50	1,501–1,900	2,001–2,400
145	1,901–2,300	2,401–2,800
270	2,301–2,700	2,801–3,200
430	2,701–3,100	3,201–3,600
625	3,101–3,500	3,601–4,000
850	3,501–3,900	4,001–4,400
1,090	3,901–4,300	4,401–4,800
1,270	4,301–4,500	4,801–5,000

[Schedule 2

r 12

[Maximum amount payable based on income

[Table 1

[Maximum amount payable by applicant with spouse or partner

[Maximum amount payable based on income (\$)	Income thresholds				
	No children (\$)	1 child (\$)	2 children (\$)	3 children (\$)	4+ children (\$)
0	0–23,004	0–26,784	0–28,944	0–31,104	0–33,156
1,300	23,005–28,728	26,785–33,480	28,945–36,180	31,105–38,880	33,157–41,472
2,860	28,729–31,104	33,481–35,748	36,181–38,448	38,881–41,148	41,473–43,740
4,420	31,105–33,372	35,749–38,124	38,449–40,716	41,149–43,416	43,741–46,008
5,980	33,373–35,748	38,125–40,392	40,717–42,984	43,417–45,684	46,009–48,276
7,540	35,749–38,016	40,393–42,660	42,985–45,252	45,685–47,952	48,277–50,544
10,000	38,017–39,420	42,661–43,416	45,253–49,572	47,953–55,620	50,545–61,776

[Table 2
 [Maximum amount payable by single applicant

[Maximum amount payable based on income (\$)	Income thresholds				
	No children (\$)	1 child (\$)	2 children (\$)	3 children (\$)	4+ children (\$)
0	0–14,364	0–26,676	0–28,944	0–31,104	0–33,156
1,300	14,365–17,928	26,677–33,372	28,945–36,072	31,105–38,772	33,157–41,364
2,860	17,929–19,980	33,373–34,128	36,073–36,828	38,773–39,420	41,365–42,120
4,420	19,981–21,924	34,129–34,884	36,829–37,476	39,421–40,176	42,121–42,768
5,980	21,925–23,976	34,885–35,532	37,477–38,232	40,177–40,824	42,769–43,524
7,540	23,977–26,028	35,533–36,288	38,233–38,880	40,825–41,580	43,525–44,172
10,000	26,029–27,540	36,289–37,260	38,881–43,416	41,581–49,572	44,173–55,620

Amendments — Schedule 2

Schedule 2 was substituted on 1 November 2008 by reg 5 of the Legal Services Amendment Regulations 2008.

Explanatory note (Published with the original regulations)

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 March 2007, revoke and replace the Legal Services Regulations 2000. The changes made by these regulations result from changes made to the Legal Services Act 2000 by the Legal Services Amendment Act 2006.

These regulations—

- prescribe maximum levels of income and disposable capital for the purposes of determining an applicant's eligibility for legal aid in respect of a civil matter:
- prescribe the allowances applicable for determining an applicant's disposable capital:
- provide for the valuation of assets for the purposes of determining an applicant's capital and disposable capital:
- allow the Legal Services Agency to include in an applicant's resources any resources that the applicant has disposed of in order to become eligible for legal aid or decrease or avoid legal aid repayments:
- set out the prescribed repayment amount for the purposes of determining the repayment payable by the aided person:
- prescribe the rate of interest for unpaid legal aid debt:
- carry forward certain provisions of the Legal Services Regulations 2000 and provide for transitional matters.