



Part 5 – Eligibility for criminal legal aid

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Eligibility for criminal legal aid

Introduction

There are four key decisions for establishing eligibility for criminal legal aid:

- Is there an eligible proceeding?
- Is this person an eligible applicant?
- Does the statutory sentence or the 'interests of justice' require aid to be granted?
- Does the applicant have sufficient means?

The criteria for each key decision derive from the Legal Services Act 2000 as amended in 2006 and Agency policy. The criteria guide the Grants Officer through the decision-making process on eligibility for legal aid.

Definitions

The following are terms used in this part of the manual.

accused	A person who is charged with an offence, (which is to proceed to a jury trial) see definition of defendant.
appeal against conviction	This is an appeal against a finding that a person is guilty. They can be quite involved and complicated. Between 2–8 hours is usually involved, sometimes more. Often there will be an appeal against sentence at the same time, however that will not greatly increase the time required for preparation and hearing. Such an appeal is called an appeal against conviction and sentence.
appeal against sentence	This is an appeal against the sentence imposed by the Court, usually on the ground that it was manifestly excessive or inappropriate. Between 2–6 hours is usually required, depending on complexity and hearing time. Often there will be an appeal against conviction as well, which will usually result in a reasonable increase in time required. Such an appeal is called an appeal against conviction and sentence.
bail appeal	This is an appeal in relation to bail, usually against a refusal of the Court to grant bail, or against the granting of bail on conditions, which are considered, unsatisfactory. See bail application.
bail application	When people are charged with criminal offences they are often remanded, which involves a putting off of a hearing often to allow for preparation, further consideration and hearing, to a later date. During the remand period a defendant or accused can be:

- (i) at large, which means that they are free to leave Court or Police or prison custody, without signing any paper work or other order, on the basis that they attend Court when required;
- (ii) on bail, which means that they are also free to leave Court or Police or prison custody, but must sign an order or form agreeing to attend at a certain time and date. There may be conditions, for example living at a certain address, not contacting the victim, or reporting to the Police each day.

A bail application is an application for bail, i.e. for the person to be released from or not put in custody. There can also be an application for a variation of the conditions of bail. Both applications are quite brief, and may involve between 15 minutes to 2 hours, plus preparation time.

- (iii) in custody, which usually means in prison or in a psychiatric hospital.

Bryant hearing, also called a disputed fact hearing

These occur when a person pleads guilty to a charge, but disputes the facts that the prosecution alleges support the charge. The facts that support a charge are very important and will often dictate the type and level of sentence. These hearings can therefore be very important.

call-overs

There are a variety of call-over type hearings, for example a list Court call over, a pre-trial call over and a pre-depositions conference. They are generally all for the purpose of entry of pleas of guilty or not guilty, selection (called an election) of a jury trial or summary fixture, setting trial and fixture dates and clarifying what needs to be done for the case to be heard. Call overs will usually take between 30 minutes and 1 hour.

criminal proceedings

These are defined in s4 and 6 of the LSA 2000. Please refer to those. However, in brief, they include a variety of proceedings for offences under the Summary Offences Act 1980 and the Crimes Act 1961, as well as some extradition and parole hearings.

The procedure for hearing criminal proceedings will depend on their type. Extradition and parole hearings may have their own special procedures, as may appeals.

However, for other criminal proceedings, there are generally three main types of offence and related procedure: summary, electable and indictable.

committal hearing

A hearing, required as a consequence of an oral evidence order under s 180 or 191 of the Summary Proceedings Amendment Act (No.2) 2008.

committal proceedings

The proceedings comprising each and every occasion on which a defendant is required to appear in court pending committal for trial or sentence and includes a standard

committal, a committal hearing and any proceedings under ss 160, 180 and 181 of the Summary Proceedings Amendment Act (No.2) 2008

defendant	A person who is charged with an offence in the district court.
depositions	<p>A hearing, for indictable matters, at which the Court hears the evidence for the Police or prosecution, and decides whether there is sufficient evidence for the charge to proceed to a trial. If so, then there is a trial, being the hearing, with a Judge and jury, at which the jury decides if the accused is guilty or not guilty.</p> <p>Also known as a preliminary hearing.</p> <p>Charges may be Proceedings Category 2, 3, or 4, depending on the type of charge and length of penalty.</p>
discovery	An order or requirement sometimes imposed by the Court that a party provide to the Court or another party a copy of all material relevant to a proceeding.
disputed fact hearing also called a Bryant hearing	These occur when a person pleads guilty to a charge, but disputes the facts that the prosecution alleges support the charge. The facts, which support a charge, are very important and will often dictate the type and level of sentence. These hearings can therefore be very important.
diversion	This is a scheme set up by the New Zealand Police, directed at first time offenders who have committed minor offences. Such people are, depending on their eligibility, given an opportunity to make a specified donation to charity or to complete specified community work. If they complete that then the charge is withdrawn and they will not have a conviction. The defendant will be remanded to enable eligibility to be assessed, and to allow time for them to make the donation or complete the work.
election	Many charges with possible penalties of between 6 months and 10 years imprisonment are electable, which means that there is an election. That is a decision by the person charged as to whether to proceed in the jury trial jurisdiction, which means that if the charge is defended there will be a jury trial, or whether to proceed in the summary jurisdiction, which means that if the charge is defended there will be a summary fixture.
electable offences	<p>The Summary Proceedings Act 1957 in its first schedule of offences provides for offences that carry the right of election to trial by jury. As a rule of thumb, these are offences carrying a maximum term of imprisonment of more than 3 months and 10 years or less. Offences can be dealt with summarily or indictably.</p> <p>The prosecution may choose to lay the charges indictably.</p>

If it does so the case will proceed to preliminary hearing and be designated as a Proceedings Category 2 matter. See criminal standard guidelines for Charges Laid Indictably.

If the prosecution does not choose to lay charges indictably, the defendant can elect whether the matter is to be dealt with summarily or by trial by jury.

If the defendant elects to be dealt with summarily the case is designated as a Proceedings Category 1 matter. See criminal standard guidelines for Election of Summary Jurisdiction.

If the defendant elects trial by jury the case is designated as a Proceedings Category 2 matter. See criminal standard guidelines for Election of Trial by Jury.

forfeiture application

These can be of two types: First, an application under the Proceeds of Crimes Act 1991 for the proceeds of crime to be forfeited to the Crown. These applications can involve substantial amounts of money or property and be very complex.

Second, an application under s84 of the Criminal Justice Act 1985 for the forfeiture, in this context being called confiscation, of a motor vehicle used in the commission of a crime. These applications occur frequently when a person appears with repeat drunk driving charges. They are usually quite brief, between 30 minutes to 1 hour, and not very complicated.

indictable

These are charges which are heard before a Judge and a jury. They are often much more complex or involved than hearings of summary charges. A hearing of an indictable charge is called a trial, as opposed to a hearing for a summary charge which is generally called a fixture.

Indictable charges, if defended, proceed to a preliminary hearing, sometimes also called a depositions hearing. That is a hearing at which the Court hears the evidence for the Police or prosecution, and decides whether there is sufficient evidence for the charge to proceed to a trial. If so, then there is a trial, being the hearing, with a Judge and jury, at which the jury decides if the accused is guilty or not guilty.

Indictable charges are those which are laid indictably or, if the charge is electable, those which a defendant or accused has elected to have heard in an indictable manner. Charges involving a maximum term of imprisonment of 10 years or more will almost always be indictable.

These will be Proceedings Category 3 or 4, depending on the maximum penalty.

indictable charge

A serious charge which, if it is to be defended, will

	proceed to a jury trial.
indictment	The formal charge against a person who is charged with an offence, which is to proceed to a jury trial.
Information	The document containing the criminal charge.
interests of justice	<p>This is not capable of being easily or quickly defined. Justice requires fairness. What is fair and in the interests of justice will depend on the context. Relevant factors may include:</p> <ul style="list-style-type: none">(i) the interests and views of a defendant, for example in receiving full disclosure prior to a hearing or, in the context of a bail application or sentencing, the desirability of being in the community to earn an income or support a family(ii) the interests and views of the victim or complainant, for example in having a defendant or accused held in custody because of a fear for personal safety(iii) the interests of the public, in the enforcement of law and order and the imposition of sentences to deter potential offenders
interlocutory application in the criminal context	The phrase covers a wide range of applications before or during a hearing, for example under s 344A as to the admissibility of evidence or s347 as to the discharge of the accused.
jury trial	<p>A hearing, almost always of a criminal charge, which involves 12 members of the public, selected at random, called a jury, hearing all of the evidence and making a decision as to whether a person is guilty or innocent. The Judge will then, usually on a separate day, sentence the person if he or she is found guilty.</p> <p>Jury trials usually involve serious charges and can be very complicated or involved. They are preceded by a depositions hearing, usually some months prior, at which the prosecution evidence is put before the Court to see whether there is sufficient evidence for the charge to proceed to a jury trial.</p> <p>Less serious criminal charges, or charges which involve a technical legal point only, are often dealt with by way of summary fixture, being a hearing at which there is no jury. A judge will hear all of the evidence and then decide whether a person is innocent or guilty.</p> <p>The other situation in which a jury trial may take place is in defamation proceedings, where a jury will make a decision.</p>
name suppression	Name suppression involves the Court ordering that the media and others not be able to publish the name of a person, usually of the victim or the defendant. Name

suppression applications are rarely successful, because of the strong emphasis in New Zealand of open justice, which requires that the public know who is charged and with what.

Name suppression applications are quite common in sexual cases, where publication of the name of the accused will often lead to identification of the victim, if for example they are from the same family.

Name suppression can be on an interim, meaning temporary, or final, which means permanent, basis.

oral evidence order

An order allowing the oral examination of a witness at a committal hearing. An oral evidence order needs to be made before a committal hearing can be held.

pre-sentence report

A report often requested by the Court, to assist it with sentencing. It is prepared by the Department of Corrections, and gives the Judge a background to the person to be sentenced, the offence and a recommended sentence. A pre-sentence report is usually either:

- (i) a stand down report, which means it is prepared the same day it is required
- (ii) a full report, which means that it takes a week or two to prepare. The person to be sentenced will be remanded during that period.

pre-trial conference

Commonly refers to a hearing which takes place in the absence of the parties, i.e. just the Judge and counsel are present. Usually quite brief (20 to 60 minutes including waiting time). The object is to allow the Judge to make directions about how the proceeding should continue, for example, as to an adjournment, directions as to filing affidavits, setting down for a hearing at a later date. Orders can usually only be made by consent.

preliminary hearing

A hearing, for indictable matters, at which the Court hears the evidence for the Police or prosecution, and decides whether there is sufficient evidence for the charge to proceed to a trial. If so, then there is a trial, being the hearing, with a Judge and jury, at which the jury decides if the accused is guilty or not guilty.

Also known as a depositions hearing.

pro bono

Generally means without charge. Sometimes lawyers will act pro bono for deserving persons, without charging them.

purely indictable offences

The District Court has jurisdiction for the preliminary hearing of these offences. Depending on the seriousness of the charge the jury trial may be held in the District or the High Court, and will be designated a Proceedings Category 3 or 4 matter. See criminal standard guidelines

for Purely Indictable Offences.

registrar's list

A brief call of the proceedings, by a Court staff member, not a Judge, to decide how the proceeding should continue.

Remand

Means the putting off of a hearing, often to allow for preparation, further consideration and hearing, to a later date. In the family and civil context, it is called an adjournment. When there is a remand, the defendant or accused can be at large, on bail or in custody. See bail application.

restorative justice

Restorative justice is relatively new in the New Zealand judicial system. It involves ascertaining the views of all of those involved in a charge, including the defendant and the victim, and attempting to resolve matters by way of apology and agreement. Often there may be a direct meeting between the defendant and the victim. A report, called a restorative justice report, will be provided to the Court summarising that meeting and other relevant matters. The Court is not bound to follow any recommendation or view expressed in such a report, but will often have regard to it.

s 160 guilty plea

This allows for a plea of guilty before committal. A defendant to whom this section applies may, at any time before the defendant is committed for trial, ask to be brought before the Court (or, if the defendant is at that time before the Court, ask to be permitted) to plead guilty to the offence with which he or she is charged.

s 157 application

This is an application for the withdrawal of an information, being the withdrawal of a charge. Once withdrawn, that is the end of that charge, however other charges may still be continued with.

s 344A application

An application under s 344A of the Crimes Act 1961 as to whether certain evidence should be able to be given at a jury trial. The law relating to what evidence can be given is very complex. These applications can be very important and quite time consuming and involved.

s 347 application

An application under s 347 of the Crimes Act 1961 that the accused, being a person who is faced with a charge which is to proceed to a jury trial, be discharged, which means that the charge will cease. A Judge can also direct that an indictment not be presented or that the accused not be arraigned on a charge, which for practical purposes means that the charge will also cease. A discharge is deemed to be an acquittal.

sentencing

This is when a person is sentenced by the Court for whatever offences he or she is guilty of. Sentencing can take place on the day a person pleads guilty or is found

guilty, however often will take place a week or two later, especially if a pre-sentence report is requested.

statement of defence	A brief written notice by a defendant or respondent that he or she wishes to defend the application. Often also called a notice of defence and the terms are interchangeable.
status hearing	<p>A hearing, before a Judge, to see whether or not the Police and the defendant still wish to proceed to a full defended hearing. Sometimes agreement can be reached as to the withdrawal of, amendment of or entry of guilty pleas to charges. They can take between 30 minutes and two hours (including waiting time) and will involve some preparation.</p> <p>It is used for summary charges only, or electable charges in which the summary procedure has been elected. It is not used for indictable charges.</p> <p>Note: not all districts have status hearings.</p>
summary	<p>These are charges which are heard before a Judge, without a jury. The Judge decides whether the defendant is guilty or not guilty.</p> <p>Most summary charges, if defended, proceed to a status hearing, then to a full hearing. A hearing of a summary charge is generally called a fixture, as opposed to a hearing for an indictable charge, which is generally called a trial.</p>
summary charge	A charge, which, if it is to be defended, may proceed to a summary fixture. In some cases the defendant may have an election to proceed to a jury trial.
Summary charges	<p>Usually involve a maximum penalty of 3 months imprisonment or less, or alternatively are electable charges with a greater maximum penalty, which the defendant or accused has elected to have heard in the summary jurisdiction. They are specified in the 1st Schedule to the Summary Proceedings Act 1957.</p> <p>They will be Proceedings Category 1.</p>
summary fixture	A hearing, of often less serious criminal charges. A judge will hear all the evidence and then decide whether a person is innocent or guilty.
summary offences	Summary offences generally carry a penalty of less than three months imprisonment and carry no election. They can only be dealt with by a Judge alone in the District Court. Many of these offences are found in the Summary Offences Act 1981. All summary offences are designated Proceedings Category 1 matters. See criminal standard guidelines for Summary Offences.
waiting time	This is usually time spent waiting in Court for a case to be

called, or for a jury to give its verdict. Often at call-over and status hearings there will be many cases, between 5 to 50, set down at or about the same time. Some might take only a few minutes, for example because a hearing date is set or a plea and sentencing takes place quickly. However, in the meantime, unless excused by the Judge, counsel must be present at Court until the case is called.

There is also waiting time after a case has been heard and until the Judge or jury makes its decision. During that time, unless excused by the Judge, counsel must be present at Court.

Grants Officer determines if there is an eligible proceeding

When this procedure is used

The Grants Officer uses this procedure for deciding whether the matter or proceeding is one for which aid may be granted.

Legislation

The key sections of the Legal Services Act 2000, as amended 2006, relating to eligible proceedings are

- S4 Interpretation: *civil proceedings, criminal proceedings, legal services*, as amended by the Legal Services Amendment Act 2006.
- S6 *Proceedings for which legal aid may be granted: criminal matters.*
- S8(6) *When legal aid may be granted: criminal matters (if child or young person is the applicant)*
- S12 *Application for a grant of aid (application is made before final disposition)*, as amended by the Legal Services Amendment Act 2006.

Summary of steps

To establish that there is an eligible proceeding, the following assessments need to be made:

- has the matter already been disposed of by a court or other forum
- is it a case to be heard before a District Court, High Court, Court of Appeal or Supreme Court
- is it a proceeding under the Parole Act 2002
- is it a sentencing matter
- is it a matter before the Youth Court
- is it a civil proceeding in the context of a criminal matter
- is it a private prosecution

Applications after the matter has been disposed of

Legislation

The key sections of the Legal Services Act 2000, as amended by the Legal Services Amendment Act 2006, are:

- Section 12(1)(c) requires that an application for legal aid *must, subject to subsection 2, be made before the final disposition*
- Subsection 12(2) allows the Agency to exercise discretion to accept an application after the matter has been disposed of, but only under certain conditions.



The day that the Agency receives an application is the date that the application is made.

The day that a matter is finally disposed of is the date on which it is concluded or finished in some way by a court or other forum.

After the Grants Officer has established the date on which the matter was finally disposed of, they will need to determine:

- when the legal aid application was made
- whether the application was received within 15 working days of the date of the final disposition
- what circumstances caused the delay
- were reasonable steps taken to apply before the final disposition?

Step 1. The Grants Officer determines when the legal aid application was made.



If...	then....
the application was received at any time on the same day as the matter was finally disposed of,	the application has been received before the proceedings were disposed of. Go to step 5 (eligible proceeding).
the application was received after close of business at the Legal Aid Office (eg: faxed or hand delivered) on the same day (any time up to midnight)	the application has been received before the proceedings were disposed of. Go to step 5 (eligible proceeding).
the application is for an appeal	this is a new application and the restrictions of s12 do not apply. Go to step 5 (eligible proceeding)
the application was received after the day on which the matter was disposed of,	the Grants Officer will need to determine whether the application was received within 15 working days. Go to step 2.

Step 2. The Grants Officer determines whether the application was received within 15 working days.


If....	then...
the application was received between: <ul style="list-style-type: none"> ▪ the first working day being the day after the date of final disposition and ▪ the final day being by the end of the 15th day 	the requirement to submit the application within 15 working days of the date of final disposition has been met. Go to step 3.
the application was received after the 15 day time limit,	the Grants Officer must reject the application under s 12 (2), as amended by the Legal Services Amendment Act 2006.

If....	then...
	<p>The Grants Officer advises the applicant and provider of their decision and the reasons for it.</p> <p>End of process.</p>

Step 3. The Grants Officer determines what circumstances caused the delay.

If...	then....
<p>the Grants Officer is satisfied that the application was delayed because of circumstances beyond the control of the applicant and listed provider</p> <p> Examples of circumstances beyond the control of the provider include:</p> <ul style="list-style-type: none"> ▪ the matter is unexpectedly finalised by the court ▪ the provider was unexpectedly indisposed or injured and was a sole practitioner. <p> Examples of circumstances beyond the control of the applicant include:</p> <ul style="list-style-type: none"> ▪ another person withheld or delayed providing information needed for the application ▪ the applicant has been unable to fully complete the legal aid application because of unexpected illness or injury. 	<p>the application has met the 'circumstances beyond control' test.</p> <p>Go to step 4.</p>
<p>the provider:</p> <ul style="list-style-type: none"> ▪ forgot, ▪ gave other work priority, ▪ was otherwise too busy, ▪ was on holiday, or ▪ was indisposed and his/her work was not allocated to another member of the law firm. 	<p>the application has failed the 'circumstances beyond control' test.</p> <p>The Grants Officer must refuse aid under s 12 (2), as amended by the Legal Services Amendment Act 2006.</p> <p>The Grants Officer advises the applicant and provider of their decision and the reasons for it.</p> <p>End of process.</p>

Step 4. The Grants Officer determines whether reasonable steps were taken to submit the application on time.

If...	then....
<p>the Grants Officer is satisfied that the applicant and provider took reasonable steps to apply before final disposition,</p> <p> For example, the provider attempted to email or fax an application to the Legal Aid office on the day of being notified that the matter was to be finalised.</p>	<p>the Grants Officer can accept the application and continue processing.</p> <p>Go to step 5 (eligible proceeding)</p>
<p>the provider took no additional steps to contact the Agency</p>	<p>the application has failed the 'reasonable steps' test.</p> <p>The Grants Officer must refuse aid under s 12 (2), as amended by the Legal Services Amendment Act 2006.</p> <p>The Grants Officer advises the applicant and provider of their decision and the reasons for it.</p> <p>End of process.</p>


Proceedings before a general court

Step 5. The Grants Officer determines whether the proceedings are eligible under s 6(a) and (b).



Section 6 of the Legal Services Act 2000 specifies the criminal proceedings for which legal aid is available.

If the proceeding is a criminal charge, sentencing or appeal to be heard in...	then....
<ul style="list-style-type: none"> • District Court • High Court • Court of Appeal • Supreme Court 	<p>legal aid is available.</p> <p>Go to step 8.</p>
<p>Privy Council</p>	<p>legal aid is available with the approval of the Attorney-General.</p> <p>Go to step 8</p>

If the proceeding is a criminal charge, sentencing or appeal to be heard in...	then....
a court or forum not listed above	go to step 6.  By far the majority of applications will be for proceedings which are eligible for legal aid under s 6(a) and (b). The few exceptions are outlined below.

Parole matters




The Agency has no jurisdiction to grant aid for any Parole board matter apart from the limited applications set out in s 6(c) of the Act.

Civil legal aid is available for other parole matters as indicated below.

Step 6. The Grants Officer determines if the parole proceedings are eligible.

If...	then....
the matter is to be heard by the Parole Board and is: <ul style="list-style-type: none"> ▪ Postponement order (s 27 Parole Act 2002) ▪ Recall (breach of parole) (ss 59-66A Parole Act 2002) ▪ Non-release order (s 107 Parole Act 2002). 	criminal legal aid is available under 6(c). Go to step 9.
the parole matter is to be heard in the High Court or the Court of Appeal and is: <ul style="list-style-type: none"> ▪ an application for an extended supervision order under ss 107F-107I, 107M, 107N of the Parole Act 2002. ▪ an appeal from certain decisions of the Parole Board under ss 68-70 of the Parole Act 2002. ▪ an appeal from the sentencing Court re extended supervision under s 107R of the Parole Act 2002. 	

If...	then....
<p>the parole matter is to be heard by the Board or a court, and involves:</p> <ul style="list-style-type: none"> ▪ Conditions on release at statutory release date (ss 17–19 Parole Board Act 2002) ▪ Parole (ss 20-26, 28-32 Parole Act 2002) ▪ Residential Restrictions (ss 33-40 Parole Act 2002) ▪ Compassionate release (s 41 Parole Act 2002) ▪ Review of decision on type of hearing (s 46 Parole Act 2002) ▪ Variation or discharge of conditions (ss 56-58 Parole Act 2002) ▪ Review of certain decisions (ss 67, 107S Parole Act 2002) ▪ Review of pre-sentence detention record (s 92(2) Parole Act 2002) ▪ Appeal from review of pre-sentence detention record (s 92(4) Parole Act 2002) ▪ Variation or discharge of non-association order (s 100(3) Parole Act 2002) ▪ Conditions on release at final release date (s 104 Parole Act 2002) ▪ Special conditions on extended supervision order (s 107K Parole Act 2002) ▪ Variation or discharge of conditions on extended supervision order (s 107O Parole Act 2002) 	<p>civil legal aid is available subject to specific eligibility criteria being met.</p> <p> If an application for aid for one of these matters is made on a criminal legal aid application form, the Grants Officer will:</p> <ul style="list-style-type: none"> ▪ keep the criminal form on file ▪ send a form 6 to the provider requesting them to fill out the section on Legal Matters only ▪ highlight the Legal Matters section from question 36 onward, particularly 'Justification for Aid' - Q43. <p>Go to Part 4, Appendix – Civil proceedings, <i>Legal aid for parole proceedings</i></p>
the parole matter is not listed above	the Grants Officer will request a recommendation from a Specialist Adviser.

Is it a proceeding under the Sentencing Amendment Act 2007?

Step 6A. Determine if the sentencing proceedings are eligible.

If...	then....
<ul style="list-style-type: none"> ▪ the matter is an application for home detention (i.e., a new application under the 	<p>criminal legal aid is available under s 6(c). A separate application and a new grant of</p>

If...	then....
Sentencing Amendment Act 2007 received after 1 October 2007),	aid are required. See steps 5A and 5B in the Indictable steps. Go to step 9.
the matter is judicial monitoring (Sentencing Amendment Act 2007),	criminal legal aid is available under s 6(c). A separate application and a new grant of aid are not required. An amendment application is required if the standard maximum rate will be exceeded. See steps 4A & 4B in the Indictable steps. Go to step 9.
the matter is Community detention (Sentencing Amendment Act 2007),	criminal legal aid is available under s 6(c). A separate application and a new grant of aid are not required. An amendment application is required if the standard maximum rate will be exceeded. Go to step 9.

Matters in the Youth Court



Under s 8(6), as amended by the Legal Services Amendment Act 2006, legal aid is not available for matters heard in a Youth Court, unless the exceptions apply.

Step 7. The Grants Officer determines whether the exceptions to not granting aid for Youth Court matters apply.

If...	then....
the matter is to be heard in the Youth Court, and a youth advocate has either been assigned or the defendant is eligible for a youth advocate	legal aid is not available. The Grants Officer may stop processing and refuse aid under s 8(6). The Grants Officer advises the applicant and provider of their decision and the reasons for it. End of process.
the applicant is under 17 years of age and has been married or in a civil union	legal aid may be available subject to the remaining eligibility criteria being met. Go to step 8.

Civil proceedings in a criminal case

Legal aid is not available for civil proceedings in a criminal matter. The Grants Officer will assess such applications for aid under the civil legal aid provisions.

See Part 4 Eligibility for civil and family legal aid, Policy **on Legal Aid Entitlement for Inmates at Disciplinary Hearings**

Step 8. The Grants Officer refuses aid for all private prosecutions.

If...	then....
the applicant wants to use legal aid to fund a private prosecution,	legal aid is not available. The Grants Officer may stop processing and refuse aid under s 8(1)(a). The Grants Officer advises the applicant and provider of their decision and the reasons for it. End of process.

Grants Officer determines if the person an eligible applicant

When this procedure is used

The Grants Officer uses this procedure to determine whether they can accept an application for legal aid from a particular person.

Legislation

The key section of the Legal Services Act 2000 covering 'eligible person' is:

- Section 8 (as amended by the Legal Services Amendment Act 2006) *When legal aid may be granted: criminal matters.*

Summary of steps

To establish that an applicant is an eligible person the following assessments are made:

- the applicant is a natural person
- the applicant has been charged with an offence or convicted of an offence
- if the applicant is under 17 years old and appearing in the Youth Court

Natural person

The Grants Officer will assume that:

- the aid is for the applicant
- the applicant is an individual natural (living) person and
- the applicant is an involved and interested party in the legal matter.

Guidance

The Grants Officer does not have to take any particular action to confirm this assumption unless information on the application form indicates otherwise.

Step 9. The Grants Officer determines the status of an application or grant when the person is no longer living.

If information indicates that the applicant ...	then....
is a prospective applicant who has died before signing the application (even if the lawyer received instruction before the applicant's death)	the applicant is not eligible to apply. The Grants Officer rejects the application, and returns it to the provider. End of process.
has died after completing and signing the application before a decision has	the applicant may be an eligible person. The Grants Officer accepts the

If information indicates that the applicant ...	then....
been made on the application,	application (subject to the provisions of s 12 – see steps 1-4 above) and assess the remaining eligibility criteria. Go to step 20
has died after a grant of aid has been made	the applicant will no longer be an eligible person. The Grants Officer should then withdraw aid unless it is reasonable for the estate of the person to continue to be party to the proceedings. <ul style="list-style-type: none"> ▪ In this situation, amend the grant under s 26(2)(a) and ▪ assess whether the applicants are acting in a representative, fiduciary or official capacity. ▪ The Grants officer must obtain a recommendation from a specialist adviser.

Step 10. The Grants officer identifies the applicant.



A legal aid applicant must be an individual person. The legal aid grant will be approved and managed in this person's name, regardless of whether or not the application was made by a representative of that person. The Grants Officer must therefore identify the applicant.

Identify the applicant...	using....
at the initial application stage by	the primary identifiers: <ul style="list-style-type: none"> ▪ name (including variations, aliases) ▪ date of birth ▪ gender When the applicant has been identified, the Grants Officer will, go to step 11.
	the secondary identifiers: <ul style="list-style-type: none"> ▪ residential address ▪ ethnicity. When the applicant has been identified, the Grants Officer will,, go to step 11.

The Agency will communicate with the individual identified as the legally aided person and with their provider. The exceptions to this are situations where an application is made on behalf of another person, in which case communication will be with the representative.



There are no citizenship or residency requirements for an applicant for criminal legal aid. The applicant need only be charged with or convicted of an offence in a New Zealand court.



Criminal legal aid is only available to a person charged with or convicted of an offence. Refer also to the section on *Eligible Proceedings*.

Step 11. The Grants Officer confirms that the applicant has been charged with or convicted of an offence.

If...	then....
the application is for a charge that will be heard in one of the courts or forums under s 6	the applicant has been charged with an offence. Legal aid is available. Go to step 12.
the application is for an appeal against sentencing or conviction,	the applicant has been convicted of an offence. Legal aid is available. Go to step12.
the application is for a charge or appeal in a forum not covered by s 6,	Legal aid is not available. Refuse aid under s 8(1)(a). The Grants Officer advises the applicant and provider of their decision and the reasons for it. End of process.




Under s 8(1)(4), the Agency may not grant aid to a child or young person:

- who is under 17 years old, and
- who is not and has not been married or in a civil union and
- whose charge is being heard in a Youth Court.

This excludes most cases involving children or young people. Such cases are dealt with under a separate system managed under the Children, Young Persons and Their Families Act 1989. However, in certain circumstances, aid may be available.

Step 12. The Grants Officer determines whether aid is available to a child or young person.

If...	then....
<p>a child or young person:</p> <ul style="list-style-type: none"> ▪ is charged with a serious offence such as murder or manslaughter, and ▪ they will be tried or sentenced in the District Court, 	<p>the Grants Officer may grant legal aid subject to <i>sufficient means</i> and <i>interests of justice</i> criteria being met.</p> <p>Go to step 13.</p> <p> The Grants Officer may request a recommendation from a specialist adviser if they need additional guidance.</p>
<p>the application involves a child or young person:</p> <ul style="list-style-type: none"> ▪ who is under 17 years old, and ▪ who is not and has not been married or in a civil union and ▪ whose charge is being heard in a Youth Court. 	<p>legal aid is not available.</p> <p>The Grants Officer refuses aid under s 8(1)(4). The Grants Officer advises the applicant and provider of their decision and the reasons for it.</p> <p>End of process.</p>

Grants Officer determines whether the statutory sentence or the interests of justice require aid to be granted

When this procedure is used

The Grants Officer uses this procedure to determine:

- whether the offence has a statutory sentence of 6 or more months imprisonment, or
- whether the interests of justice require the Agency to approve a grant of criminal legal aid.

Legislation

The relevant section of the Act is:

- Section 8, *When legal aid may be granted: criminal matters*, as amended by the Legal Services Amendment Act 2006.

Summary of steps

The 'merit' decision for criminal legal aid has two parts to it set out in s 8(1)(c):

- the offence is punishable by a maximum term of imprisonment of 6 months or more or
- it appears to the Agency that the interests of justice require that the applicant be granted legal aid.

Therefore, the Grants Officer will need to make the following assessments:

- Is it an offence that is punishable by a maximum term in prison of 6 months or more
- Is it one of the exceptions to the 6 months imprisonment requirement
- Do the interests of justice require that aid to be granted after considering factors set out in s8(2) and (3)
- Other issues to consider, such as the New Zealand Bill of Rights Act 1980.

Step 13. The Grants Officer assesses eligibility where several charges are covered by one application.

If...	then....
there several charges covered by one application	the Grants Officer bases the eligibility decision on the most serious charge. In most cases, the other charges covered by the application will also be approved for legal aid, as they will be dealt with at the same time. Go to step 14.

If...	then....
any of the other charges are substantially different, involving a different provider or court	a separate grant or grants may be required . The Grants Officer assesses each charge separately for eligibility. Go to step 14.

Maximum sentence of 6 months or more



Under s 8(1)(c)(i), the Grants Officer may grant legal aid if the sentence for the offence to which the application relates is a maximum term of imprisonment of 6 months or more.

Step 14. The Grants Officer determines whether there is a maximum sentence of 6 months or more.

If...	then....
the application form does not state the maximum penalty	The Grants Officer reviews other information sources to find out the maximum penalty: <ul style="list-style-type: none"> ▪ looking up the relevant Act ▪ checking previous files from the same applicant ▪ contacting to the provider and ask them to supply this information.
the application form correctly states, or if the Grants Officer has verified: <ul style="list-style-type: none"> ▪ the section of the Act under which the applicant has been charged, and ▪ that the maximum penalty for that charge is 6 months or more, and ▪ the application is not for an appeal or Parole Board hearing 	the requirement of s 8(1)(c)(i) has been met. The Grants Officer may grant legal aid subject to <i>sufficient means</i> Go to step 22 (sufficient means test)
the application for an appeal or a Parole Board hearing	Go to step 15 (8(5) exceptions)
the charge carries a maximum penalty of less than 6 months,	the Grants Officer needs to determine <i>interests of justice</i> . Go to step 16.

Exceptions to the 6 months sentence requirement



Section 8(5) sets out two exceptions to the 6 months imprisonment requirement. When the application is for:

- *an appeal or*
- *a proceeding to which s 6(c) applies.* These are specific proceedings before the New Zealand Parole Board under the following sections of the Parole Act 2002:
 - Postponement order (s 27)
 - Recall (breach of parole) (ss 59-66A)
 - Non-release order (s 107).
 - an application for an extended supervision order under ss 107F-107I, 107M, 107N.
 - an appeal from certain decisions of the Parole Board under ss 68-70.
 - an appeal from the sentencing Court re extended supervision under s 107R.

Step 15. The Grants Officer determines if the exceptions under s 8(5) apply.

If...	then....
the application is for <ul style="list-style-type: none"> ▪ an appeal or ▪ a proceeding to which s 6(c) applies 	the Grants Officer must assess the application against the <i>interests of justice</i> requirements. Go to step 16 (interests of justice)
the application is not for <ul style="list-style-type: none"> ▪ an appeal or ▪ s 6(c) proceeding and the sentence is under 6 months? 	The exceptions under s 8(5) do not apply. However, the Grants Officer must still assess the application against the interests of justice test. Go to step 16 (interests of justice)



The Grants Officer must establish the *interests of justice* by considering the criteria listed in s 8(2). This is for applications where the proceeding:

- has a maximum statutory sentence of less than 6 months
- is an appeal
- is a s 6(c) proceeding.



Under s 8(3) the Grants Officer may also consider any other relevant circumstances in making the *interests of justice* decision.

When assessing whether or not the interests of justice require that the applicant be granted legal aid, the Grants Officer must consider all of the factors listed in s 8(2).

Step 16. The Grants Officer assesses interests of justice against all of the factors listed in s 8(2).

Consider	Guidance
<p>(a) whether the applicant has any previous conviction</p>	<p>(i) The Grants Officer will find out whether the applicant has had any previous convictions.</p> <p>(ii) The Grants Officer will consider the consequences of a first or another conviction and whether these could be minimised by ensuring the applicant is represented. The consequences could relate to the applicant's general life circumstances or to a likely sentence</p> <p>(iii) The Grants Officer will need to be satisfied that the consequences of a conviction on general life circumstances are beyond those that would apply to any applicant. For example:</p> <ul style="list-style-type: none"> ▪ current employment eg: a mandatory licence disqualification may cost the applicant their job if they require a licence to carry out their job; or forfeiture of work equipment may affect their ability to earn income ▪ future employment eg: a conviction might hinder progress on a particular career path that the applicant has already started (such as current study or workplace preparation) ▪ future options eg: prevent travel if this is required for job or study ▪ significant loss of mana, cultural standing or honorary position within a specific cultural, ethnic or religious community if the applicant already has this position. <p>The applicant will need to demonstrate that a conviction would have these actual consequences.</p> <p>Such consequences would support a decision to grant aid on <i>interests of justice</i></p>

Consider	Guidance
	<p>grounds.</p> <p>(iv) the consequences of a conviction on a likely sentence:</p> <ul style="list-style-type: none"> ▪ If the applicant has no previous convictions the Grants Officer will be more likely to grant aid if the matter is serious ▪ If the applicant has a previous convictions: <p>A further conviction for a similar charge will most likely result in a more severe consequences (eg: a prison sentence may result if the previous conviction was a final warning or the applicant had breached the conditions of a previous community sentence)</p> <p>Another conviction if the other convictions are unrelated to the current charge may have less the consequences.</p> <p>(v) If the charge is minor and/or consequences minimal it would be a reasonable expectation that a duty solicitor could represent the person on the day.</p>
(b) whether the applicant is charged with or convicted of an offence punishable by imprisonment	<p>The Grants Officer needs to confirm that the offence is potentially punishable by imprisonment. Check the statutory sentence in the relevant legislation.</p> <p>If confirmed, this fact could increase the likelihood of aid being granted, but is unlikely on its own to be a reason to grant aid.</p>
(c) whether there is a real likelihood that the applicant, if convicted, will be sentenced to imprisonment	<p>(i) The term ‘real likelihood’ means that there must be a real or significant possibility of imprisonment, rather than a remote or theoretical possibility. For example, will previous convictions on the same charge increase the likelihood of imprisonment if convicted again?</p> <p>(ii) The Grants Officer will assess the likelihood that the applicant, if convicted of the offence, will be imprisoned. They do not have to consider the applicant’s chances of</p>

Consider	Guidance
	<p>conviction.</p> <p>(iii) The Grants Officer considers any previous convictions disclosed by the applicant.</p> <p>(iv) The Grants Officer will consider the sentencing practices at a local court on the likelihood of imprisonment, eg: a third drink/drive conviction in some regions will most likely result in a prison sentence, but not in other regions.</p> <p>(v) If there is a real likelihood of imprisonment, this could increase the likelihood of aid being granted but on its own is unlikely to be a reason to grant aid.</p>
(d) whether the proceedings involve a substantial question of law	<p>(i) Whether there is a 'substantial' question of law will depend on the particular circumstances and the particular issue of law.</p> <p>(ii) It is more than a question of law - it means a question that has not been determined by the courts or where there are complex or alternative arguments.</p> <p>The Grants Officer will seek the advice of a specialist adviser if this factor appears significant in a particular case.</p>
(e) Whether there are complex factual, legal, or evidential matters that require the determination of a court	<p>When making this assessment, the Grants Officer will consider:</p> <p>(i) the particular circumstances of the case.</p> <p>(ii) whether the procedure is too complex for the applicant to pursue alone,</p> <p>(iii) whether a duty lawyer could represent them.</p> <p>Complex matters may include situations where:</p> <ul style="list-style-type: none"> ▪ a procedure or case is too complex for an applicant to pursue themselves, because cross examination, expert or medical witnesses may be required ▪ there is an argument about the admissibility of evidence (about the way a Police Officer undertook a videotaped

Consider	Guidance
	<p>interview or undertook a search)</p> <ul style="list-style-type: none"> ▪ the case involves a provision of an Act, which has not been considered by the Courts before
<p>(f) whether the applicant is able to understand the proceedings or present his or her own case whether orally or in writing</p>	<p>The Grants Officer will assess the applicant's ability to understand the proceedings or describe the issues that make up their defence.</p> <p>For example, there may be</p> <ul style="list-style-type: none"> ▪ a language barrier, ▪ a disability (such as a physical disability of blindness, deafness, speech impediment, or mental/intellectual disability), ▪ emotional trauma or ▪ illiteracy.
<p>(g) in any proceeding to which section 6(c) applies, the consequences for the applicant if legal aid is not granted</p>	<p>The Grants Officer will assess the consequences for the applicant if legal aid is not granted for specific proceedings under the Parole Act 2002.</p> <p>For example:</p> <ul style="list-style-type: none"> ▪ continuing imprisonment ▪ a return to prison ▪ an appeal against Parole Board decisions would not proceed.
<p>(h) in respect of an appeal, the grounds of the appeal.</p>	<p>The Grants Officer will assess the grounds of the particular appeal.</p> <p>Go to step 17</p>

Other circumstances considered under ‘interests of justice’ – s 8(3)



In addition to the above list, Grants Officers are also required to consider whether there are other relevant circumstances.

Step 17. The Grants Officer considers other circumstances relevant to the interests of justice.

- The circumstances must be shown to be actual, to have an impact on the applicant and the *interests of justice*
- The Grants Officer then goes to step 18 to determine whether or not the interests of justice require that a grant of aid be made.

The Grant’s Officer’s decision on the *interests of justice* test



The Grants Officer must consider each factor under s 8(2)(a) to (h) and s 8(3). However, this does not mean that all of the factors must be established before a decision can be made.

Making a decision on the interests of justice test involves the exercise of discretion on the Grants Officer’s part. They need to assess all relevant factors rather than simply confirming whether or not a particular case meets the individual “threshold” test for each listed factor. The exercise of discretion means that the Grants Officer has to decide whether, on the balance of all the facts and assessments, the interests of justice require a grant of aid to be made.



While the Grants Officer is required to consider all factors listed in section 8, it is likely that the *interests of justice* test will be established in the following scenarios.

Step 18. The Grants Officer determines whether or not the interests of justice require that a grant of aid be made.

If the Grants Officer’s assessment is that:	then....
<p>the applicant has been charged and convicted of an offence punishable by imprisonment and</p> <ul style="list-style-type: none"> ▪ there is a real likelihood that, if convicted, he/she will be sentenced to imprisonment, or ▪ he/she is unable to understand the proceedings or present his/her own case or ▪ the proceedings are complex and/or involve a substantial question of law . 	<p>the Grants Officer may grant legal aid subject to the <i>sufficient means</i> test.</p> <p>Go to step 22.</p>
on the balance of facts and assessments, a	the Grants Officer must consider other

If the Grants Officer's assessment is that:	then....
grant of aid should be refused	interests of justice factors before refusing aid. Go to step 19.


New Zealand Bill of Rights Act 1990



If the Grants Officer is considering refusing legal aid, they need to consider the following:

- the impact of the New Zealand Bill of Rights Act 1990
- the provisions of the International Covenant on Civil and Political Rights
- whether the matter could be dealt with by a duty lawyer
- whether the charges have been laid under the Summary Offences Act 1981 or the Crimes Act 1961.

Step 19. The Grants Officer considers the rights and protections under the Bill of Rights Act 1990.

The Grants Officer will consider	Guidance
Section 24, which provides that: <ul style="list-style-type: none"> ▪ everyone who is charged with an offence shall have the right to adequate time and facilities to prepare a defence. ▪ a person charged shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for legal assistance. 	The Grants Officer will consider whether, if aid is not granted, the applicant would be able to access any legal assistance required. If the answer is 'no' or 'not sure' the Grants Officer will need to review their decision on <ul style="list-style-type: none"> ▪ sufficient means and/or ▪ interests of justice.  Keep in mind: <ul style="list-style-type: none"> ▪ that the Grants Officer must consider each application on its own merits, ▪ that the Act gives the Grants Officer discretion in granting and refusing legal aid, ▪ the Agency's mission statement: 'Helping people access justice.'
Section 25, which provides minimum standards of criminal procedure,	

International Covenant on Civil and Political Rights

Access to criminal legal aid to satisfy the interests of justice is also a right guaranteed in international law under provisions of the International Covenant on Civil and Political Rights. See 'Guidance' under step 19 above.

Referral to duty lawyer



When assessing an application for aid, the Grants Officer may consider whether a duty lawyer could deal with the matter. The Grants Officer should look into this option when they consider *sufficient means* and the *interests of justice*.

Step 20. The Grants Officer may consider referral to a duty lawyer as an alternative to granting aid.

If...	then....
<p>The <i>interests of justice</i> test is not met because:</p> <ul style="list-style-type: none"> ▪ an offence is at the lower end of the scale of seriousness, ▪ the applicant is not suffering from a disability or disadvantage and ▪ they are not likely to face a term of imprisonment 	<p>it would be appropriate for the duty lawyer to deal with the matter.</p> <p>The Grants Officer refuses legal aid under s 8 and advises the applicant and provider of their decision and the reasons for it.</p> <p>If feasible, the Grants Officer will try to contact the applicant and suggest that they contact a duty lawyer when they arrive at court.</p>
<p>The <i>interests of justice</i> test is met because:</p> <ul style="list-style-type: none"> ▪ the matter requires lengthy instructions, or ▪ the person is at risk of being sentenced to imprisonment or face other serious consequences, or ▪ the matter cannot be resolved on the day 	<p>it is not appropriate to refer a case to a duty lawyer.</p> <p>The Grants Officer grants or refuses aid depending on the outcome of the eligibility assessments.</p>

Offences and penalties

When considering applications for the following charge types it is essential to know the section (and Act) the charges were laid under.

If laid under the Crimes Act the charges carry a higher maximum penalty and the defendant has a right of trial.

If laid under the Summary Offences Act the maximum penalties are smaller and the defendant has no right of trial.

Step 21. The Grants Officer confirms the section and Act under which the charge was laid.

Charge	Summary Offences Act 1981 – no right of trial		Crimes Act 1961 – right of trial	
	Section	Max. penalty	Section	Max. penalty
Assault on police	s10	\$4,000 or 6 months	s192(2)	3 years
Common assault	s9	\$4,000 or 6 months	s196	1 year

	Summary Offences Act 1981 – no right of trial		Crimes Act 1961 – right of trial	
Charge	Section	Max. penalty	Section	Max. penalty
Wilful damage	s11	\$2,000 or 3 months	N/A	N/A
Possession of instruments/tools for burglary	s14	\$2,000 or 3 months	s233	3 years

It is also essential to know what section the following Crimes Act and Land Transport Act charges come under to differentiate the serious/electable from the less serious/non-electable.

		Crimes Act 1961	
Charge	Right of trial	Section	Max. penalty
Theft of property less than \$100	no	s 227(d)	3 months
Theft of property more than \$100	yes	s 227(c)	1 year
	yes	s 222, 223, 224, 227(b)(i)-(v), 227(ba)	7 years

		Land Transport Act 1998	
Charge	Right of trial	Section	Max. penalty
Driving while disqualified (first or second offence)	no	s 32 (3)(a)	\$4,500 or 3 months
Driving while disqualified (third or subsequent offence)	yes	s 32 (4)(a)	\$6,000 or 2 years
Excess breath/blood alcohol (first or second offence)	no	s 56 (3)(a)	\$4,500 or 3 months and mandatory loss of licence
Excess breath/blood alcohol (third or subsequent offence)	yes	s 56 (4)(a)	\$6,000 or 2 years and mandatory loss of licence
Refuses permit blood specimen (first or second offence)	no	s 60 (2)(a)	\$4,500 or 3 months

Refuses permit blood specimen (third or subsequent offence))	yes	s 60 (3)(a)	\$6,000 or 2 years
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Grants Officer determines whether the applicant has sufficient means

When this procedure is used

The Grants Officer uses this section to determine if the applicant is eligible for criminal legal aid on financial grounds.

Legislation

The relevant sections of the Act are:

- S8 *When legal aid must be granted: criminal matters*, as amended by the Legal Services Amendment Act 2006,
- Schedule 1 *Definition of income and disposable capital*, as amended by the Legal Services Amendment Act 2006,

The relevant regulations are:

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



Under s 8 of Act legal aid may be granted in criminal matters if:

- *it appears to the Agency that the applicant does not have sufficient means to enable him or her to obtain legal assistance (s 8(1)(b)).*
- *And in the determination of sufficient means the Agency must have regard to the applicant's income and disposable capital (s 8(4)).*

Summary of steps

To decide whether the applicant is eligible on financial grounds for criminal legal aid the following assessments need to be made:

- the applicant's gross annual income
- the applicants disposable capital
- whether the applicant's circumstances are covered by the Agency's policy scenarios determining sufficient means
- for applicants not covered by Agency policy scenarios
 - establishing the likely cost of representation, including likely costs if taken privately
 - checking if other financial factors need to be taken into account
 - making the decision whether the applicant has *sufficient means*

Gross annual income and disposable capital

Step 22. The Grants Officer determines the applicant's gross annual income.

- See part 6 **Income and capital assessment** in this manual for the procedure.
- When this assessment is completed, the Grants Officer goes to step 23 to determine the applicant's disposable capital.

Step 23. The Grants Officer determines the applicant's disposable capital.

- See part 6 **Income and capital assessment** in this manual for the procedure.
- When this assessment is complete, the Grants Officer goes to step 24.



Note that the calculation of capital for repayment decisions is *different* to that for disposable capital in eligibility decisions. However, both assessments draw on the same set of financial information provided by the applicant.

Agency policy scenarios



There is no financial threshold for the assessment of sufficient means.

Usually, the applicant will not be regarded as having sufficient means in the following two scenarios.

Step 24. The Grants Officer determines if the application falls within the Agency's policy scenarios.

If...	then....
<p>the offence is not punishable by a maximum term of 6 months imprisonment or more:</p> <ul style="list-style-type: none"> ▪ but the interests of justice require aid to be granted, and ▪ the applicant's maximum repayment amount based on capital is zero (MAPC = \$0), and ▪ the maximum repayment amount based on income (MAPI) is \$4,420 or less,¹ 	<p>the applicant does not have sufficient means.</p> <p>No further assessment of sufficient means is required.</p> <p>The Grants Officer may grant aid provided that all preceding eligibility criteria have been met.</p> <p>End of process.</p>
<p>the offence is punishable by a maximum term of imprisonment of six months or more and</p> <ul style="list-style-type: none"> ▪ the maximum repayment amount based on capital (MAPC) is \$50, and ▪ the maximum repayment amount based on income (MAPI) is \$10,000 or less. 	

¹ To assess the MAPI and MAPC, refer to the repayments section of this manual.

If...	then....
the application is not covered by either of the 2 scenarios above,	further assessment is required before making a decision. Go to step 25.
the Grants Officer intends to refuse an application that otherwise meets the Agency scenarios for the <i>sufficient means</i> test	the Grants Officer must have strong reasons for this and must first discuss the refusal reason with a Team leader before completing their decision. Go to step 30



Note - It is likely that many applications will fall within either of the 2 scenarios.



For all applications outside the above two scenarios, the Grants Officer will need to determine whether the person has sufficient means by considering the total likely cost of legal representation if aid is refused, that is,

- the applicant's available financial means, having regard to their income and disposable capital and
- the total likely cost of representation if funded by legal aid and
- the likely cost of a case if taken privately.

The applicant's available financial means

To assess the applicant's financial means, the Grants Officer will need to assess:

- the amount of gross income – go to step 22 above
- the amount of disposable capital – go to step 23 above
- the availability of income
- the accessibility of capital
- other relevant financial factors

Availability of income

Regardless of the amount of income that the applicant has the Grants Officer may need to consider any issues about the ability of the applicant to access and use their assessed income.

Step 25. The Grants Officer considers the applicant's ability to access their assessed income.

Consider	Guidance
What the applicant's weekly or fortnightly income is and the size of family dependent on that income	For example, the Grants Officer can get an indication of the applicant's weekly disposable income by using the applicant's MAPI ² , which is an indication of annual disposable income for that family.
Whether the annual income amount can be relied on.	For example: no future income if the applicant is in prison, or has no regular income if reliant on seasonal work.
Whether another person controls the income.	Have they, or could they refuse access to funds by the applicant?
Whether the income has exceptional demands made on it and which are not already covered by payments the applicant receives to cover those exceptions.	<p>For example: costs for an illness, injury or disability not covered by a Disability Allowance or ACC payment .</p> <p>Consider the applicant's circumstances against the <i>serious hardship</i> criteria in s 37(6).</p> <p><i>Serious hardship</i> means significant financial difficulties caused by:</p> <ul style="list-style-type: none"> ▪ the applicant's inability to meet minimum living expenses; or ▪ the cost of medical treatment for the applicant or their dependant; or ▪ a serious illness suffered by the applicant or their dependant.
All the above factors.	Go to step 26.

Accessibility of capital

Regardless of the amount of assessed capital the Grants Officer may need to look at the nature and value of any disposable capital, which might enable the applicant's to raise funds by way of a loan or by selling an asset.

² MAPI, or maximum amount payable based on income is a calculation for repayment – see section on *Repayments*

Step 26. The Grants Officer considers whether the applicant could raise funds by a loan or by selling an asset.

Consider	Guidance
Selling an essential asset should not be expected.	For example, selling the family's second car if both vehicles are necessary for essential activities such as transporting children to school or getting to a work place.
The ability to raise funds immediately may be limited.	Even if the legal aid applicant has equity in fixed assets against which a loan could be raised, many major lending institutions will be reluctant to provide a loan. The borrower would not have disposable income to repay the debt over time and is facing a criminal charge, with possible imprisonment and loss of earning capacity.
The exception where assets may be taken into consideration will be if the applicant has current assets.	For example, investment shares or bank term deposits that can be readily converted to cash assets.
All the above factors.	Go to step 27.

Other financial considerations



The Grants Officer is required to consider other factors brought to the attention of the Agency in the application process.

Step 27. The Grants Officer considers other financial factors.

Consider	Guidance
Details about the applicant's recent financial decisions.	For example: <ul style="list-style-type: none"> ▪ whether the applicant has known for some time that there were legal costs to meet; ▪ whether there was time and ability to save; ▪ whether and how legal attendances to date have been paid by the applicant or other person.
Details about payment arrangements with lawyers.	For example, if an aided person could only sustain instalments at a low rate over an extended period of time, this is most likely not acceptable to a lawyer as private payment. See also the policy and decision-processes for repayment and debt management in this manual.

Consider	Guidance
Details about the case that give an indication of likely costs.	For example, <ul style="list-style-type: none"> ▪ if the applicant intending to plead guilty and the offence is minor, likely costs will be moderate; or ▪ it is known in advance that a case might become complex and costly.
All the above factors.	Go to step 28.

Likely cost of representation

The cost of a case will vary according to factors such as the seriousness of the case, how the applicant intends to plead, and other factors that might make it complex and costly.

Step 28. The Grants Officer estimates legal aid funding for the case.

If...	then....
the provider makes no submission on the special circumstances of the case	the Grants Officer can assume that the Agency's maximum rates in the Proceedings Steps apply for a standard case, or the Grants Officer can refer to the table of likely costs of cases used to set the interim repayment – refer to section [repayments – interim repayment] Go to step 29.
the provider: <ul style="list-style-type: none"> ▪ submits an estimate of costs that exceeds the Agency maximum rates because of special circumstances, and ▪ the Grants Officer assesses this as reasonable 	this will be the legal aid funding rate for this non-standard case. Go to step 29.


Step 29. The Grants Officer considers the cost of a similar case defended privately against the cost of a legally aided case, if this information is available.
Go to step 30.

Grants Officer's decision



The Grants Officer must have strong grounds to refuse an application where the applicant meets the Agency scenarios for the *sufficient means* test.

Step 30. The Grants Officer determines whether to refuse or grant aid for an application not covered by the Agency's policy scenarios.

If...	then....
<p>the Grants Officer's decision is that it would not be reasonable to approve legal aid on <i>sufficient means</i> grounds and they intend to refuse the application,</p> <p> For example, see the reasons listed under step 27.</p>	<p>the Grants Officer will submit their reasons to their Team Leader for review before completing the decision.</p>
<p>the Team Leader agrees with the Grants Officer's decision,</p>	<p>the Grants Officer refuses aid under s 8(1)(b).</p> <p>The Grants Officer advises the applicant and provider of their decision and the reasons for it.</p> <p>End of process.</p>
<p>the Team Leader disagrees with the Grants Officer's decision,</p>	<p>the Grants Officer re-considers their decision with reference to the points raised by the Team Leader</p>
<p>the Grants Officer decides that the applicant does not have <i>sufficient means</i> and the application meets the preceding eligibility tests,</p>	<p>the Grants Officer grants legal aid.</p> <p>End of process.</p>