



## Part 7 – Set Maximum Grant

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### **Proceedings Steps**

The proceedings steps can be found on the Agency’s website at:  
<http://www.lsa.govt.nz/lawyers/proceedings-steps.php>

#### **Family Proceedings Steps**

- Adoption
- Children and Young Persons
- Day to day Care and Contact
- Domestic Violence
- Family Proceedings/Guardianship
- Mental Health
- Paternity
- Personal and Property Rights
- Property Relationships

#### **Civil Proceedings Steps**

- ACC
- Employment
- Refugee
- Review Tribunals
- Other Civil Proceedings

#### **Criminal proceedings Steps**

- Summary
- Indictable
- Appeals

# Maximum grants

## Legislation

Section 4(1):

- defines a 'maximum grant' as the "maximum amount of legal aid granted under a grant of legal aid".

Section 20(1):

- gives the Agency discretion as to how a maximum grant is specified – it may be "a total dollar amount, a maximum number of hours, a period over which the aid must be provided or any combination of these".

Section 75(3) gives the Agency authority to decline some or all of a claim for payment if:

- the claim exceeds the 'maximum grant'
- the disbursements claimed are not approved for payment by the Agency
- an examination has determined that it is excessive or inaccurate.

## Policy

A maximum grant is specified for each grant of legal aid, for all law types.

Specification of the maximum grant enables the Agency, if necessary, to decline to pay an invoice that exceeds the maximum grant.

In criminal grants, and family grants, which do not require prior approval between the steps in a proceeding, the maximum grant will be:

- the guideline hours for the activities in the steps to be performed by the provider – at the provider's hourly rate, which is determined by the 'proceedings and forum categories' and 'levels of experience';
- the fees (if any) set for the activities in the steps to be performed by the provider; and
- the amount (if any) of pre-approved for disbursements.

In Mental Health, ACC, Employment, Refugee and other Civil (other) grants, which require prior approval between the steps in a proceeding:

- the maximum grant will be expressed as a dollar amount comprising fees and disbursements
- the provider and client are advised that the grant – of a dollar amount - is a maximum grant.

## Civil parole matters

<i>Legal aid for civil parole matters</i>	<b>Guideline Hours</b>
<b>Preparation time</b>	
Preparation time for: <ul style="list-style-type: none"> <li>• Conditions on release at statutory release date</li> <li>• Parole</li> <li>• Compassionate release</li> <li>• Review of decision on type of hearing</li> <li>• Variation or discharge of conditions)</li> <li>• Review of certain decisions</li> <li>• Review of pre-sentence detention record</li> <li>• Appeal from review of pre-sentence detention record</li> <li>• Variation or discharge of non-association order</li> <li>• Conditions on release at final release date</li> <li>• Special conditions on extended supervision order</li> <li>• Variation or discharge of conditions on extended supervision order</li> </ul>	Preparation time of up to <b>3</b> hr @ guideline hours
<b>Hearing time</b>	
Hearing time for the matters listed above	Actual time @ guideline hours
<b>Commentary and staff actions</b>	
<p>On receipt of Form 10 <i>Civil/Family tax Invoice</i>, Grants Officers may approve payment up to the relevant maximum rate.</p> <p>If listed providers expect to exceed the maximum guideline rate due to special circumstances, they must submit a request for an amendment on Form 9, <i>Civil/Family Amendment</i> advising the reasons for the amendment.</p> <p>Grants Officers may refer the file and amendment to a Specialist Adviser for a recommendation.</p>	

## **Granting guidelines for proceedings under the Criminal Procedure (Mentally Impaired Persons) Act 2003**

1. Proceedings and processes under this Act can be triggered:
  - in indictable matters tried summarily,
  - at a depositions hearing or at trial (up until all evidence is presented).
2. Therefore, the current approach to granting aid for hearings or trials under the Criminal Steps should also be applied to these processes.
3. The special hearing and any finding of unfitness to stand trial or an insanity plea will usually involve a full adversarial hearing. Given that the special hearing is incidental to the substantive proceedings, the Proceedings Category rating for the special hearing is the same as that for the substantive matter.

## **Interim policy on payment for assisting clients with debt issues**

1. In special circumstances, Grants Officers may approve a request from a provider for payment for attendances related to their client's legal aid repayment. Special circumstances include situations where:
  - the client has special communication needs requiring extra assistance of the provider, e.g., English as a second language which may mean they have difficulty understanding spoken English over the phone, or a disability affecting their understanding or communication
  - the client's financial situation is unusually complicated and they require extra assistance
  - the client has tried but is unable to resolve the issues with the Debt Management Group (DMG) directly. The Agency expects that the client would discuss the issues in the first instance with the DMG
2. Payment will be made to providers on the basis of actual and reasonable time, up to one hour maximum at guideline hours.
3. Grants Officers may approve more time at guideline hours if there are demonstrated reasons for additional time. Such requests for additional time will be considered on their individual merits.
4. Providers will need to describe the special circumstance to justify the payment. For example, if the provider assists the client with a write off application, the provider will need to outline the reasons why the client was unable to pursue this with the DMG. Note that DMG have a write-off form and can assist applicants over the (0800 600 090) phone.
5. If a payment is approved, this is to be added to the cost of services. If the application to DMG for a write-off is successful or partially successful, the amount to be paid to the provider will also be written off the aided person's debt.

6. Payment to providers for assisting clients with debt matters can only be made while the grant is active. Although a debt write-off while the grant is active would be unusual, there may be special circumstances to justify a write off.
7. Once the case has been finalised, debt matters (other than releasing statutory land charges) and write off applications are handled by the DMG.
8. Providers are required to submit an application for an amendment in the usual way.

## Payment over provider rate

### Policy

1. The Agency will authorise payment over the provider rate in exceptional circumstances.
2. In assessing whether exceptional circumstances exist each case will be considered on its own merits.
3. Payment for services and advice will be made by a special disbursement or by a specific payment in excess of the provider rate.
4. Such payments will only be authorised:
  - on the recommendation of the Manager Specialist Advisers and
  - with the approval of the Manager Grants.
5. Applications for payment over the provider rate may be refused if no exceptional circumstances are identified. A recommendation from the Manager Specialist Advisers and the approval of the Manager Grants are not required.

### Steps

Step 1. The Grants Officer determines whether exceptional circumstances exist.

Consider	Guidance
Each case on its own merits.	The Grants Officer will assess whether: <ul style="list-style-type: none"> <li>▪ the case or the situation is unique or has similarities to other cases or situations</li> <li>▪ the particular situation of the case points to exceptional circumstances warranting authorisation of payment over the provider rate.</li> </ul>
Whether exceptional circumstances exist.	Exceptional circumstances may exist if: <ul style="list-style-type: none"> <li>▪ The specified lawyer has a unique set of skills or experience relevant to the particular case</li> <li>▪ Another lawyer could not reasonably be expected to provide representation due to the short time remaining before trial. However, this only applies if:                             <ul style="list-style-type: none"> <li>- it can be shown that delays were outside any provider's control and</li> <li>- the trial date won't be changed and</li> </ul> </li> </ul>

Consider	Guidance
	<ul style="list-style-type: none"> <li>- the lawyer required needs to have a unique set of skills.</li> <li>▪ A refusal to authorise payment over the provider rate impacts on the client’s right to legal representation under section 24(c) and (d) of the New Zealand Bill of Rights Act 1990 (where this is combined with one of the other circumstances in these guidelines)</li> <li>▪ There will be a lengthy trial which would unreasonably tie up the resources of the law firm of the listed provider, so they would be unable to take on other clients at the same time, and no assistance from another lawyer is available.</li> <li>▪ There are other relevant considerations given the particular circumstances.</li> </ul> <p>Go to step 2 <i>Special disbursement</i></p>
Whether another lawyer with the appropriate qualifications and experience is available to accept assignment without payment over guideline hours.	In these situations, exceptional circumstances will generally be deemed not to exist.  End of process.

Step 2. The Grants Officer determines whether a special disbursement would be appropriate.

Consider	Guidance
<p>Whether the advice or services required could be provided via a one off specialist report or disbursement.</p> <p>Grants Officers may consider payment by way of a special disbursement for specialist advice and services, even if the lawyer is a listed provider.</p>	<p>In these circumstances, a special disbursement may be appropriate as an alternative to paying over the provider rate for the participation of a provider throughout the case.</p> <ul style="list-style-type: none"> <li>▪ Prior approval of the Agency is required for a special disbursement.</li> <li>▪ The provider will need to submit a written statement of justification detailing the exceptional circumstances of the case.</li> <li>▪ This statement is usually contained within the application form or Form 2: Criminal Amendment or Form 9: Civil/family Amendment.</li> </ul>
Whether a special disbursement may be approved for advice or services under the category of ‘Other specialist reports’.	<p>This category of disbursement has a standard maximum threshold of \$750. However, amounts in excess of this threshold may be approved:</p> <ul style="list-style-type: none"> <li>▪ in exceptional circumstances</li> <li>▪ on the recommendation of the Manager Specialist Advisers and</li> <li>▪ with the approval of the Manager Grants.</li> </ul>

Consider	Guidance
	Go to step 3 <i>Refer to Manager Specialist Advisers.</i>

Step 3. The Grants Officer refers the file to Manager Specialist Advisers for a recommendation.

Action	Detail
If the Grants Officer decides that the case meets the criteria for exceptional circumstances,	then they will seek a recommendation from the Manager Specialist Advisers,  The Manager Specialist Advisers will prepare a recommendation and discuss this with the Manager Grants.  End of process.

# Setting the maximum grant in criminal cases

## Special circumstances



The Agency's guideline hourly rates can be exceeded in special circumstances.

Step 1. To understand what are *special* circumstances, the Grants Officer considers what *usual* circumstances are.

Consider	Guidance
The guidelines for a defended matter whether summary hearing or jury trial have been based on,	<ul style="list-style-type: none"> <li>▪ Defendant not giving evidence (the defendant is simply putting the prosecution to evidentiary proof)</li> <li>▪ Crown / police have no more than four witnesses</li> <li>▪ The law involved is well known and not complicated</li> <li>▪ There were no difficulties in obtaining disclosure</li> <li>▪ Court processes were followed without numerous adjournments and delays</li> </ul>
For guilty pleas, the guidelines are based on	there being very little liaison with police and probation and only two appearances, ie entering the plea and sentencing submission



## Deciding if Special Circumstances Exist



The Grants Officer is required to use their own discretion when assessing whether or not something amounts to a special circumstance. The fact that a number of other cases have had the same circumstances does not mean that the circumstances are not special.

Step 2. The Grants Officer determines if special circumstances exist.

If...	then....
<ul style="list-style-type: none"> <li>▪ The defendant has a positive defence – eg alibi</li> <li>▪ The defendant calling evidence (the defendant will give evidence or will call witnesses)</li> <li>▪ There are a large number of prosecution witnesses – at least five or more</li> </ul>	

If...	then....
<ul style="list-style-type: none"> <li>▪ Defence counsel has to interview potential witnesses – three or more</li> <li>▪ There are complicated legal or factual issues</li> <li>▪ There are language barriers or a disability or other disadvantage</li> <li>▪ The charge is particularly technical – requiring expert assistance eg forensic accountant, forensic scientist or psychologist, etc</li> <li>▪ There are multiple accused</li> <li>▪ There are multiple offences</li> <li>▪ The defendant does not live locally</li> <li>▪ The Police/Crown have not co-operated or been timely in meeting their obligations</li> <li>▪ Fixtures have been abandoned and there has been some delay before next fixture.</li> </ul>	<p>there may be special circumstances.</p> <p> The test is whether the circumstances are special in relation to the guidelines bearing in mind what circumstances the guidelines are based on</p>
<p> The above list is not exhaustive. The factors above may not necessarily amount to special circumstances but you should be alert to their existence.</p>	

## Disabilities and Disadvantages



The Grants Officer may grant additional aid if the legally aided person suffers from a disability or disadvantage. The additional amount granted will depend on the nature of the disability or disadvantage and how this affects the hours the provider must spend on the case.

Step 1. The Grants Officer determines if the applicant suffers from a disability or disadvantage.

If...	then....
<p>a person is physically disabled, in custody, in hospital or housebound,</p>	<p>the provider</p> <ul style="list-style-type: none"> <li>▪ will need extra time to travel to the client, and</li> <li>▪ may need extra time to liaise with authorities to arrange a visit.</li> <li>▪ may have to spend additional time with their client to fulfil their professional</li> </ul>

If...	then....
	obligations This will affect the amount of time approved for a grant.
the client's English is not of a standard where they can communicate meaningfully with their provider,	an interpreter is required. Multiply client's attendances or attendances involving the interpreter by <b>1.5</b> times.
there are language difficulties not requiring an interpreter,	The provider will need to spend more time with the client explaining concepts in language that can be understood.  It may also take several attempts to clarify or understand the instructions being given by the client due to language barriers.
the client is illiterate,	additional preparation time is required.  The provider will have to read disclosure to the client either over the phone or in person. Phone attendances are not safe as the provider will have difficulty ensuring there is proper comprehension and communication. There is no point advising the client in writing if they cannot read.

## Second Criminal Matter – Amendment to Grant



When an applicant applies for legal aid for a second criminal matter or matters, in general the Grants Officer should treat the application as an amendment to the grant.

Step 1. The Grants Officer determines whether to treat a second criminal matter as an amendment or as a separate application.

If...	then....
the charges are unrelated,	the provider may wish to see separate charges receive separate grants.
the provider does not want the application to be treated as an amendment	the provider will need to set out brief reasons why the charges should receive a separate grant.  The provider will need to send or fax these reasons to the Agency in writing. This will accompany the application form if the provider is completing the form.  Reasons might include: <ul style="list-style-type: none"> <li>▪ the charges are unrelated and the Court will not hear them together</li> </ul>

If...	then....
	<ul style="list-style-type: none"> <li>▪ charges are in different Courts</li> <li>▪ for some of the charges the applicant has a co-accused or is charged as a party</li> <li>▪ the charges are at different stages within the Court system and will be managed separately by the Court</li> </ul>
there will be no economies involved just because the provider is representing the applicant on both (sets of) charges,	The Grants Officer has more discretion to make a separate grant.
the application is treated as an amendment to a grant,	<p>the provider may charge for preparation time on the separate charges.</p> <p>The provider will <b>not</b> be entitled to charge multiple flat fees or more than one hearing time for sentencing.</p> <p>This is similar to the way we treat family matters where there is more than one application.</p>


## Interlocutory Applications



An interlocutory application means an application in a pending proceeding. This is an application made to determine an issue before the substantive hearing. In criminal matters an interlocutory application would be an application in respect of any matter prior to the final defended hearing or jury trial.

Step 1. The Grants Officer determines if there is an interlocutory application. The following are examples of interlocutory applications

Types of interlocutory application	Definition
Section 140 Criminal Justice Act 1985.	Court may suppress the publication of the name of the accused or of any other person connected with proceedings.
Section 340 Crimes Act 1961	Severance of charges.
Section 344A Crimes Act 1961	Order relating to admissibility of evidence – where prosecutor or accused wishes to adduce any particular evidence or challenge the admissibility of any proposed evidence.
Section 347 Crimes Act 1961	Accused discharged because there is no case to answer.
Section 185C Summary Proceedings Act 1957	Application that complainant in an offence of sexual nature is to give evidence in person at

Types of interlocutory application	Definition
	the preliminary hearing.
Sections 31, 32 and 33 of the Summary Offences Act	relate to the taking of evidence of certain witnesses who are dangerously ill, about to leave the country or for evidence to be taken at a distance
 There are many interlocutory applications that include applications for bail, adjournments and directions as to discovery.	

Step 2. The Grants Officer will considers the following factors to determine how much aid to grant interlocutory applications.

Consider	Guidance
The law in respect of many of the interlocutory applications. This is generally well established.	The costs of such applications will depend on the quantity of the evidence and legal argument required.
If there is a novel point,	then more time may be required to prepare the application.
The application and submissions of both the accused and the Crown.	This will give an indication of the issues and areas in dispute and the time required to prepare and argue the matter.
The provider's explanation of <ul style="list-style-type: none"> <li>▪ what the issues are,</li> <li>▪ what work they will need to do to get the matter ready for hearing and</li> <li>▪ the likely length of the hearing.</li> </ul>	This will help the Grants Officer to determine whether their estimate is appropriate.

## Sentencing Act 2002



Under the Sentencing Act 2002, the Court has powers to:

- disqualify offenders from holding or obtaining a drivers licence
- confiscate motor vehicles in certain circumstances.

These provisions may occasionally increase the amount of aid granted.

Step 1. The Grants Officer assesses the impact of the Court's powers under the Sentencing Act 2002 on the amount of aid granted.

The Court's powers	Impact on the grant
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The Court's powers	Impact on the grant
<p>S. 124 enables the Court to disqualify an offender convicted of an offence punishable by imprisonment if it is satisfied that:</p> <ul style="list-style-type: none"> <li>▪ the commission of the offence was facilitated by the use of the motor vehicle by the offender regardless of whether the offender was driving, or</li> <li>▪ a vehicle was used to facilitate the offender's flight, or avoidance from detection or arrest after the commission of the offence.</li> </ul>	<p>There may be argument over the use of a motor vehicle, which will increase preparation and hearing time.</p>
<p>Confiscation provisions in sections 127-142 of the Sentencing Act.</p> <p>S. 128 provides that if a person is convicted of certain specified offences then the Court may order the confiscation of a vehicle in certain circumstances provided:</p> <ul style="list-style-type: none"> <li>▪ the offender owns or has an interest in the vehicle at the time of conviction; <b>and</b></li> <li>▪ the vehicle was used to commit or facilitate the commission of the offence, regardless of whether the offender was driving; <b>or</b></li> <li>▪ the vehicle was used by the offender to facilitate the offender's flight or avoid his-her detection or arrest after the commission of the offence.</li> </ul> <p>The court must have regard to:</p> <ul style="list-style-type: none"> <li>▪ undue hardship in relation to the offender's trade, business, profession, occupation or employment</li> <li>▪ any undue hardship on any other person who would otherwise have the use or benefit of the vehicle</li> <li>▪ the nature and extent of the offender's or other person's interest in the vehicle</li> <li>▪ any other considerations</li> </ul>	<p>There can be legal argument about:</p> <ul style="list-style-type: none"> <li>▪ interest or</li> <li>▪ the ownership of a vehicle,</li> <li>▪ hardship and</li> <li>▪ other considerations.</li> </ul> <p>These types of applications will increase preparation and court time required for what may appear to be a simple sentencing matter.</p>

## Expert evidence



The Agency is often asked to fund the cost of an expert. Sometimes that expert may be based abroad. Sometimes it is not possible to negotiate rates of remuneration with various experts, especially where experts are in short supply. In these cases the demanded rate will have to be paid. However, the Grants Officer must also ensure that expert evidence is justified and reasonable in terms of the defence case.

Step 1. The Grants Officer considers whether payment for an interim expert report is reasonable.

Consider	Guidance
Sometimes it may be appropriate to approve paying for an interim report,	particularly when it's not clear whether there is a reasonable defence to the charge or challenge of the Crown / Police evidence.  In these cases the expert report is required to investigate whether there is a possible defence.
It may be cheaper in the long term to approve payment of an interim report to ascertain the expert's initial views.	This will help the Grants Officer to determine if they should fund a more extensive report.  Go to step 2

Step 2. The Grants Officer determines whether payment for an expert report is justified and reasonable.

If...	then....
an expert report is sought,	The Grants Officer will ask why the expert report is required and how it is intended that the report or expert will progress matters for the defence.
	if appropriate, the Grants Officer will ask whether the provider has considered alternative less expensive sources for the evidence.
the expert may not assist the defence much at all or the issue being pursued is not relevant to a reasonable defence,	decline the request for funding an expert report.
the provider is able to justify the use of an expert,	approve the request for funding an expert report.

## Proceedings category for sexual violation



A PC4 provider has to handle a case where preventive detention is being considered. However, a PC3 lawyer (or possibly even a PC2 lawyer) may have been assigned to a sexual violation case that later becomes liable for preventive detention.

At the stage where a High Court judge indicates they are considering a sentence of preventive detention, the Agency will consider a request for:

- assignment of a co-counsel at a PC4 level, or
- reassignment of the case to a PC4 lawyer as lead provider.

## Removal orders under the Immigration Act 1987



People subject to removal orders under s54 of the Immigration Act 1987 do not qualify for assistance under the Duty Solicitor Scheme as they have not been charged with an offence (see s47 of the Legal Services Act).

Duty lawyers are not to appear in connection with removal orders and any claims are to be refused.

# Setting the maximum grant in family cases

## Introduction

The Agency has established guideline hours, and in some situations fixed fees, for activities within the steps for family law proceedings. The guideline hours/fees are used to set the maximum grant on each approved application for legal aid.

There are 2 options for setting the maximum grant in family cases:

- standard family granting – grants which no longer require prior approval between steps in a proceeding.
- prior approval – grants which require prior approval between steps in a proceeding.

The option used for setting the maximum grant will depend on the proceedings type and whether or not the provider expects to exceed the maximum guideline hours for the proceeding.

## Legislation

Section 20, *Maximum grant*:

- S20(1), which defines the meaning of ‘maximum grant’
- S20(2), which allows the Agency discretion as to how the maximum grant is expressed

## Definitions

### Activities

Are the key actions that make up a step. The guideline hours/fees are assessed against these activities. Each activity is expected to comprise a number of tasks and these are noted on the steps for reference.

### Guideline hours

- are the fair and reasonable number of hours to complete each of the activities listed under each step in the Agency’s published proceedings steps
- are considered to be a fair and reasonable payment for the work performed in 80% of cases.
- may be claimed ‘up to’ the specified amount.

### Matter

The proceedings type for which aid is granted

### Maximum grant

- is approved in accordance with s20 Legal Services Act 2000.
- consists of the guideline hours:
  - for the completed activities within each step at the provider rate, and
  - disbursementsfor the proceedings.

No 'carry over' policy	The practice of transferring unused hours from one step to the next step within a proceeding is not permitted.
Proceedings	The legal action being undertaken in the court.
Proceedings steps	The primary document listing providers rates and guideline hourly rates for a range of proceedings.
Provider rate	Refers to the hourly rate paid to the provider and is determined by the providers experience level and the forum rating of the proceedings (ie, in which court they will be heard).
'Unders' and 'overs'	Where a provider completes one activity within a step under the guideline hours, and completes another activity within the same step over guidelines hours, the provider may bill for this without first submitting an amendment.

## Policy

### Standard family granting

Standard family granting is a streamlined procedure for administering a grant of legal aid in family law proceedings covering:

- all approved family legal aid grants/files post 1 March 2007
- all family law proceedings **except** Mental health.

The key features of standard family granting include:

- no requirement for prior approval between steps within family proceedings ie, providers will be able to complete such work as required provided it falls within the agreed maximums in the family proceedings steps
- the maximum grant is specified as the guideline hours for the required activities within each step for the proceeding
- limited documentation requirements, ie, initial evidence of the proceedings and the information provided on the interim and final invoices.

The steps for family law proceedings are organised into 'steps' or main events within each proceeding, eg pre-proceedings (investigate and make application), pre hearing, and hearing. Each step within the proceeding comprises a number of key activities for which guideline hours/fees have been established. Each activity is expected to involve a number of tasks and these are noted on the steps for reference.

The guideline hours established for activities within a step in the proceeding are considered to be a fair and reasonable estimate of the work to be performed for that activity in 80% of cases. If a provider expects to exceed the guideline hours, an application to amend the grant will need to be submitted by the provider in accordance with the process for amending grants.

The guideline hours have been expressed in 'up to' terms, indicating that they are a 'maximum' estimate of time in determining the cost of work to be undertaken – in 80% of matters.

Once a grant is approved for a matter, work may be undertaken up to the ‘maximum’ guideline hours/fees specified for each activity within each step in a proceeding without further approval/pre-approval – unless approval is specifically stated as being required.

The Agency does not allow unused hours in one step to be carried forward to the next step within a proceeding. While no carry over is permitted *between* steps, the balancing of unders and overs may be applied *within* a step under certain circumstances:

- there must two (2) or more completed activities within a step – the guideline hours from incomplete activities cannot be applied to this ‘balancing’ process;
- the total of the hours being claimed across the completed activities must be equal to or within the guideline hours available; and
- certain activities cannot be applied to this amendment process - ‘additional factors’ and ‘use of interpreters’ (these activities are used to ‘top up’ the guideline hours for activities within steps when special circumstances exist).

This means that:

- if a provider completes 2 or more activities in the same step; *and*
- has an “under” in one of those steps (e.g. completed activity in 1 hour less than guideline hours); *and*
- has an “over” in another completed activity (e.g. went over guideline hours by 1 hour when completing the activity,

then the provider may bill for this, and Grants Officers may approve it.

## Granting where prior approval *is* required


The prior approval granting procedure:

- is used for **Mental Health** proceedings
- may be used for any other family proceeding where the provider intends to exceed the guideline hours
- requires prior approval to move between steps within the same proceedings
- may express the maximum grant in dollar terms for specific items
- requires detailed documentation at each step in the proceedings – initial grant, amendments, interim and final invoices.

## Switching between standard and prior approval granting


Grants Officers have the discretion to switch between managing a file under prior approval and standard family granting.

If...	then
<ul style="list-style-type: none"> <li>▪ the application for legal aid was originally approved under the prior approval granting procedure, and</li> <li>▪ the provider submits a subsequent amendment for work required that is within the guideline hours,</li> </ul>	<p>Grants Officers have the discretion to manage the grant under the standard family granting procedure.</p>

If...	then
<ul style="list-style-type: none"> <li>▪ the application for legal aid was originally approved under the standard family granting procedure, and</li> <li>▪ the provider subsequently advises that additional work is required in excess of the guideline hours,</li> </ul>	<p>Grants Officers <b>will</b> manage the grant under the prior approval granting procedure.</p> <p>The provider must:</p> <ul style="list-style-type: none"> <li>▪ submit an amendment to grant application using Form 9 (Amendment to Grant)</li> <li>▪ meet the requirements of s24.</li> </ul> <p> <b>Note</b> that the grant may return to being managed under standard family granting if a subsequent amendment or an invoice is submitted for work required that is within the guideline hours.</p>

## Procedure

Step 1. The Grants Officer determines which granting option applies.

If...	then
<p>the work required is within the guideline hours, and the application is for:</p> <ul style="list-style-type: none"> <li>▪ Adoption</li> <li>▪ Children &amp; Young Persons</li> <li>▪ Day-to-Day Care and Contact</li> <li>▪ Domestic Violence</li> <li>▪ Family Proceedings/Guardianship</li> <li>▪ Paternity</li> <li>▪ Personal &amp; Property Rights</li> <li>▪ Property Relationships</li> </ul>	<p>the standard family granting process applies.</p> <p> <b>Note</b> that in standard family granting, detailed documentation is <b>not</b> required. At this point, initial evidence of the proceedings (either a copy of the proceedings or a summary of the dispute provided on the application form) will be sufficient.</p> <p>Go to Step 2, <i>The Grants Officer sets the maximum grant under standard family granting.</i></p>
<p>the application is for a mental health matter,</p>	<p>Go to 'Setting the maximum granting for Mental Health proceedings' below.</p>
<p>the provider indicates on the application form that they expect to exceed guideline hours for the proceedings,</p>	<p>the Grants Officer will administer the grant under the prior approval granting procedure.</p> <p>Go to Step 3, <i>The Grants Officer sets the maximum grant under prior approval granting.</i></p>

Step 2. The Grants Officer sets the maximum grant under standard family granting.

- the maximum grant will be:
  - the guideline hours for the activities described in the proceedings step @ the provider's hourly rate, which is determined by the 'proceedings and forum categories' and 'levels of experience'
  - the fees (if any) set for particular activities within the proceeding step, and
  - the amount (if any) pre-approved for disbursements.

Step 3. The Grants Officer sets the maximum grant under prior approval granting.

If...	then...
the provider expects to exceed guideline hours for the proceedings,	<p>they are required to:</p> <ul style="list-style-type: none"> <li>▪ request the additional hours on form 6, or</li> <li>▪ after aid has been granted, submit an amendment to grant application using Form 9 (Amendment to Grant), and</li> <li>▪ meet the terms of s24 Legal Services Act 2000 (see amendment of grant – family / civil / criminal of this section).</li> </ul> <p>The grant is to be managed under the prior approval granting process:</p> <ul style="list-style-type: none"> <li>▪ prior approval is required to move between steps within the same proceedings</li> <li>▪ detailed documentation <b>is</b> required at each step in the proceedings – initial grant, amendments, interim and final invoices.</li> </ul>
the provider submits a subsequent amendment or an invoice for work required that is within the guideline hours,	the Grants Officer may manage the grant under standard family granting.

## Setting the Maximum Grant for Mental Health Proceedings

### Introduction

The maximum grant for Mental Health Proceedings consists of the maximum guideline rate (MGR) for the particular action being taken. The MGR is considered to be, on average, a fair and reasonable payment for the work performed in 80% of cases. Only the time *actually* and *reasonably* incurred on the matter, up to the specified amount, can be claimed in the invoicing process.

Mental health grants are managed exclusively under the prior approval granting procedure.

## Procedure

Step 1 The Grant Officer selects the appropriate proceedings step.

- Form 7, Mental Health Proceedings, asks the provider to nominate the proceedings type, and the step number(s).
- Using this information, the Grants Officer selects the appropriate step required for the work expected to be undertaken.

Step 2 The Grant Officer determines if a discount applies

If the Step shows a discount for repeat instructions, the Grants Officer will check whether there has been a previous application for the action. Some examples:

If...	then...
Application is a Section 16 Review. No previous applications in LA Office for a Section 16 review	Step 1 Mental Health applies. MGR is 3 hours as new instructions.
Application is for a Section 16 Review. The provider is Mary Bailey. LAO shows Mary Bailey was counsel for a Section 16 Review application 10 months earlier.	Step 1 Mental Health applies. MGR is 2 ½ hours as the repeat is within 18 months and the provider is the same.
Application is for a Section 16 Review. The provider is Mary Bailey. LAO shows Rachel Jones was counsel for a Section 16 Review 10 months earlier.	Step 1 Mental Health applies. MGR is 3 hours as the provider is different so it is treated as new instructions.

Step 3 The Grants Officer sets the maximum grant.

The maximum grant is determined by:

- the applicant’s mental health application history as noted in LA Office,
- the published proceedings steps (Flip Charts), and
- the granting notes included in the flip charts
- multiplying MGR with the providers appropriate guideline hours

Step 4 The Grants Officer advises the provider of the maximum grant.

- Mental Health letters are sent to the provider only. This is because applicants have in the past become distressed when they have received correspondence from the Agency.
- Client text is enclosed as the provider will advise if the client should be sent a copy of the letter.

# Disbursements policy

## Introduction

Lawyers and other providers are normally expected to pay for all disbursements relating to a legally aided matter, but may claim reimbursement of those costs from the Agency. The disbursements are claimed by the 'lead provider' assigned to the matter.

Disbursements which may be reimbursed include:

- general office disbursements,
- special disbursements, and
- travel costs.

The amount of disbursements incurred on a matter, along with the fees paid for the services provided, comprise the cost of services, part or all of which may be required to be repaid by the legally aided person.

Providers are required to retain sufficient documentary evidence and records to be able to support each claim in the event of an examination and/or audit. See sections 75 and 78 of the Legal Services Act 2000.

The Agency may also, from time to time, undertake assurance programmes aimed at ensuring the work invoiced by the provider within the steps was actually completed, the work was justified, and the provider advised the Agency of any change in the merits of the case.

This new disbursements policy applies to all files, including pre and post 1 March 2007 files, criminal, family and civil.

## General office disbursements

General office disbursements include specific office expenditure incurred by a lawyer or other provider which can be *directly* attributed to the conduct of a matter.

The Agency does **not** require 'prior approval' for general office disbursements up to \$100 for each matter.

Amounts in excess of \$100 will be considered for approval as part of the application for amendment to grant process.

General office disbursements may not be separately claimed if already claimed as part of a fixed fee in the steps for a proceeding.

The Agency will reimburse the following general office disbursements:

Type of disbursements	Basis of Reimbursement
Cell phone/mobile calls	Cost per call
Facsimiles	Cost per facsimile
Photocopying	20 cents per page copied
Postage, courier fees	Cost per delivery

Type of disbursements	Basis of Reimbursement
Toll calls (from land lines)	Cost per call

Office overhead expenses will not be reimbursed. These include:

- office running costs
- secretarial costs
- file administration
- computer costs
- phone rental, including local calls
- cell phone/mobile plans and equipment rentals.

A claim for '*actual and reasonable*' general office disbursements should be submitted on the appropriate Agency invoice form (criminal, family, civil, Treaty of Waitangi) for the matter in question. Details of the supplier, date and description of service, type and amount of the disbursements claimed should be recorded on, or attached to, the invoice.

## Special disbursements

Special disbursements include specific expenditure for the services supplied by third parties which can be *directly* attributed to the conduct of a matter.

The Agency will reimburse the following pre-approved special disbursements:

Type of pre-approved disbursements	Basis of reimbursement
Agents Fees	Fee @ Cost (as agreed by reference to rates for providers)
Court Filing Fees	Fees not covered by the fees waiver and refund regulations (Fees noted under the regulations may be waived/refunded upon application to the Registrar of the Court)
DNA and Blood Testing	<b>50%</b> Cost of Test Cost of Birth Certificate – if relevant to matter
Document/Process Servers	Cost (as invoiced by third party)
Specialist Report – Independent Psychiatric Report issued under the Mental Health (Compulsory Assessment and Treatment ) Act 1992	Cost (as invoiced by third party)
Specialist Reports – Valuations, Medical, Restorative Justice, Other	Cost (as invoiced by third party)
Witnesses and Interpreters	Fee @ Rates governed by the Witnesses and Interpreters Fees Regulations 1974, or Courts Schedules - and any subsequent updates
Title search	Cost (as invoiced by third party)

The Agency does not require 'prior approval' for the special disbursements listed above **providing** they are incurred on matters which will be conducted *within* the guideline hours specified in the steps for the particular proceedings. The disbursement may be:

- a standard cost which has been notified to providers as being part of the proceedings steps applicable to the matter, e.g. 50% of the cost of DNA Testing required as part of the Paternity proceedings; or
- a disbursement expected to be incurred in accordance with the tasks and activities which have been specified in the steps, e.g. Costs for the serving of documents by Document and Process Servers.

The lead provider will need to seek prior approval from the Agency for all other special disbursements, as part of the application for legal aid, or the amendment to grant process.

A claim for '*actual and reasonable*' special disbursements should be submitted on the appropriate Agency invoice form (criminal, family, civil, Treaty of Waitangi) for the matter in question. Details of the supplier, date and description of service, type and amount of the disbursements claimed should be recorded on, or attached to, the invoice.

Special disbursements may not be separately claimed if already claimed as part of a fixed fee in the steps for a proceeding.

## Travel costs policy

### Introduction

From time to time it will be necessary for providers to travel to meet clients, witnesses, and experts, and to attend hearings and meetings between the parties. To ensure that the impact of travel costs is managed fairly for all parties the Agency has developed a Travel Policy for Legal Aid Services.

The travel policy applies to services provided by lawyers and other providers under the Legal Aid Scheme, the Duty Solicitor and Police Detention Legal Assistance Schemes.

### Policy

#### Scope

The Agency will reimburse the actual and reasonable travel costs, including time, of a lawyer or other provider, where:

- the legally aided person is being held in a place of detention, including prisons, mental health institutions, refugee detention centres;
- the travel destination is not 'local' for the provider – for example, travel to a court in another centre (High Court, Court of Appeal), the matter is moved to another court by the Judiciary/Courts ('local' is explained below);
- non reimbursement of travel costs would compromise the legally aided person's access to justice; or where
- exceptional circumstances exist.

Travel costs will not normally be reimbursed for travel within the 'local' centre.

- 'Local' is defined as the centre where the provider normally works and where the travel destination is located.
- As a guide, distances less than 25 kilometres and/or travel time less than 30 minutes would be considered 'local' and travel costs will not be generally be reimbursed.
- However, Grants Officers have the discretion to reimburse providers for travel within a local area if it is unreasonable for the provider to bear the time and cost of travel given the time and distance involved.

### **Assignment**

The Agency will usually assign a provider to a legal aid matter who is located in the same centre as the aided person and the court.

### **No prior approval**

The Agency does not require 'prior approval' for travel costs where travel is required and unavoidable because of the circumstances of the matter. For example, prior approval is not required where it is necessary for the provider to travel:

- to a place of 'detention' or similar
- as a result of a change in assigned court for the hearing or trial.

All other travel costs, expected to be incurred in accordance with the Travel Policy, will require prior approval.

### **Reimbursement of travel costs**

Provided that the travel costs can be *directly* attributed to the conduct of a matter where travel is required, the Agency will reimburse at cost the following expenses:

- accommodation, meals, and incidentals
- travel – air, train, bus, taxi, car rental
- use of provider's motor vehicle

Travel time will be paid as fees @ the guidelines hours specified for travel time.

Travel costs may not be separately claimed if already claimed as part of a fixed fee in the steps for a proceeding.

# Amendment of grant – family / civil / criminal

## Legislation

The key sections of the Legal Services Act 2000 are:

- Section 24(1)(c) requires that an application for an amendment to the grant *must, subject to subsection 2, be made before the final disposition*
- Subsection 24(2) allows the Agency to exercise discretion to accept an amendment application after the matter has been disposed of, but only under certain conditions.

## Policy

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.

Section 24 of the Act allows an application for an amendment to be made at any time before the matter to which the application or grant relates is finally disposed of by the relevant body. Provided the requirements of s24 are met, Grants Officers must consider the request for the amendment. An amendment **cannot** be refused on the grounds that it is late, regardless of the reasons for its late submission.

## Procedure

Step 1. The Grants Officer receives the request and checks completeness.

Action	Guidance
Ensure that the application is: <ul style="list-style-type: none"><li>▪ from the lead provider.</li><li>▪ submitted on Form 2 – Criminal, Form 9 – Family/Civil.</li><li>▪ complete and accounting details are accurate (including guideline hours).</li></ul>	If the amendment application is incomplete or unsigned: <ul style="list-style-type: none"><li>▪ return the form to the lead provider with request for further particulars,</li><li>▪ note the action taken in a file note.</li></ul>
An invoice may also accompany a request for an amendment to grant.	Both of these should be considered at the same time.  <i>Go to step 2 The Grants Officer determines when the amendment application was made.</i>


## Step 2. The Grants Officer determines when the amendment 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 6 <i>Special circumstances</i> .
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 6 <i>Special circumstances</i> .
the application was received after the day on which the matter was disposed of,	the Grants Officer will determine whether the application was received within 15 working days.  Go to step 3 <i>The Grants Officer determines whether the amendment application was received within 15 working days.</i>

## Step 3. The Grants Officer determines whether the amendment application was received within 15 working days.


If....	then...
the application was received between: <ul style="list-style-type: none"> <li>▪ the first working day being the day after the date of final disposition and</li> <li>▪ the final day being by the end of the 15<sup>th</sup> day</li> </ul>	the requirement to submit the application within 15 working days of the date of final disposition has been met.  Go to step 4 <i>The Grants Officer determines what circumstances caused the delay.</i>
the application was received after the 15 day time limit,	the Grants Officer will reject the application under s 24 (2)(a)  End of process.

## Step 4. The Grants Officer determines what circumstances caused the delay.

If...	then....
the Grants Officer is satisfied that the amendment application was delayed because of circumstances beyond the control of the applicant and listed provider   Examples of circumstances beyond the control of the provider	the application has met the 'circumstances beyond control' test.  Go to step 5 <i>The Grants Officer determines whether reasonable steps were taken to submit the amendment application on time.</i>

If...	then....
<p>include:</p> <ul style="list-style-type: none"> <li>▪ the matter is unexpectedly finalised by the court</li> <li>▪ the provider was unexpectedly indisposed or injured and was a sole practitioner.</li> </ul> <p> Examples of circumstances beyond the control of the applicant include:</p> <ul style="list-style-type: none"> <li>▪ another person withheld or delayed providing information needed for the application</li> <li>▪ the applicant has been unable to fully complete the legal aid application because of unexpected illness or injury.</li> </ul>	
<p>the provider:</p> <ul style="list-style-type: none"> <li>▪ forgot,</li> <li>▪ gave other work priority,</li> <li>▪ was otherwise too busy,</li> <li>▪ was on holiday, or</li> <li>▪ was indisposed and his/her work was not allocated to another member of the law firm.</li> </ul>	<p>the application has failed the 'circumstances beyond control' test.</p> <p>The Grants Officer will refuse aid under s 24 (2)(b).</p> <p>End of process.</p>

Step 5. The Grants Officer determines whether reasonable steps were taken to submit the amendment 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 will accept the application and continue processing.</p> <p>Go to step 6 <i>The Grants Officer makes a decision on the amendment.</i></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 will refuse aid under s 24 (2)(b).</p>

If...	then....
	End of process.

Step 6. The Grants Officer makes a decision on the amendment.

- Approve the application and amend the grant
- Refuse the amendment and confirm original maximum grant
- Request further information
- End of process.

## **Appendix - waiver and refund of civil court fees**

Legally aided persons may apply to the Ministry of Justice to have the following civil court fees waived or refunded.

### **Supreme Court**

1. Application for leave to appeal
2. Filing a notice of appeal
3. Determination of hearing date for appeal
4. Hearing any appeal for each half-day or part of a half-day after the first day
5. Sealing any order or judgment (including every duplicate or certified copy of any order or judgment)
6. Copy of judgment (other than a copy supplied to a party to the proceedings)
7. For faxing documents at the request of a party (except where documents have to be faxed for operational reasons)
8. For copying any document (other than a judgment), actual and reasonable costs.

### **Court of Appeal**

1. Filing any application or any notice of appeal
2. Setting down proceedings for hearing (including filing case on appeal and judgment appealed from)
3. Hearing any proceedings set down for hearing for each half-day or part of a half-day after the first day
4. Sealing any order or judgment (including every duplicate or certified copy of any order or judgment)
5. Settling and comparing record to Privy Council
6. Copy of judgment (other than a copy supplied to a party to the proceedings)
7. For faxing documents at the request of a party (except where documents have to be faxed for operational reasons)
8. Copy of any document, other than a judgment, per page actual and reasonable costs.

### **High Court**

1. Filing (including sealing if necessary) the original document commencing a proceeding (other than an interlocutory proceeding).
2. Filing an interlocutory application, other than an application for summary judgment.
3. Filing:
  - a. a statement of defence; or

- b. an amended statement of defence; or
  - c. an amended statement of claim; or
  - d. an appearance; or
  - e. a third party notice; or
  - f. a statement of claim between defendants; or
  - g. a statement of defence between defendants:
4. Filing a counterclaim, or statement of defence and counterclaim where both are included in the 1 document.
  5. Filing, under rule 141 of the High Court Rules, the first affidavit filed by a party in answer to an affidavit filed in support of an interlocutory application for summary judgment.
  6. Determination of setting down date for a proceeding on the standard track- (other than an undefended demand for an unliquidated amount).
  7. Determination of hearing date for appeal.
  8. Hearing fee for each half-day or part half-day after the first day.
  9. Hearing an interlocutory application for summary judgment in respect of which an affidavit in answer has been filed (fee for each half-day or part of a half-day after the first half-day).
  10. Sealing the original copy of any judgment, order, rule, memorial, certificate, commission, letters of request, or judgment not otherwise provided for.  
However no sealing fee is payable in respect of:  
any order made in interlocutory proceedings; or  
any probate or letters of administration; or  
any order for admission as a barrister and solicitor.
  11. Issue of certified copy of any document or any Registrar's certificate.
  12. Filing an application for admission as a barrister and solicitor.
  13. Filing an application for probate or letters of administration.
  14. Sealing exemplifications or duplicates (probate or letters of administration) or resealing under section 71 of the Administration Act 1969.
  15. Attendance before a Registrar in an inquiry or reference, or examination of witnesses by a Registrar under an order of the Court.
  16. Copy of a judgment (other than a copy supplied to a party to the proceeding).
  17. For faxing documents at the request of a party (except if documents have to be faxed for operational reason(s)).
  18. Copy of a document, other than a judgment, per page: actual and reasonable costs.
  19. Search of Court records (including a search relating to 1 or more files) for each search.
  20. Search of a register or file that relates to an application for a grant of administration under the Administration Act 1969 or any corresponding former Act or to proceedings for the recall of any such grant.
  21. Appointment of Commissioner to take affidavits.

## District Court

1. Filing of the original document commencing any proceeding (other than an interlocutory proceeding) to which these regulations apply, unless otherwise provided for.
2. Filing an interlocutory application (including an application for summary judgment).
3. Filing:
  - (a) a statement of defence; or
  - (b) an amended statement of defence; or
  - (c) an amended statement of claim; or
  - (d) an appearance.
4. Filing a counterclaim, or statement of defence and counterclaim if both are included in the 1 document.
5. Filing the first affidavit filed by a party in answer to an affidavit filed in support of an interlocutory application for summary judgment.
6. Filing an application for a fixture for the hearing of any proceeding (other than for an interlocutory proceeding or an appeal or cross-appeal or a hearing for an undefended demand for an unliquidated amount).
7. Setting down appeal or cross-appeal or hearing.
8. Hearing fee for each half-day or part of a half-day, after the first half-day.
9. Sealing the original copy of any document.
10. Attendance before Registrar in inquiry or reference or examination of witnesses by Registrar under an order of the Court.
11. Filing application for an attachment order.
12. Filing application under section 84B of the District Courts Act 1947 for an examination of judgment debtor.
13. Filing application for warrant of distress or warrant for recovery of specific chattels or warrant for recovery of land.
14. Filing application under rule 378 of the District Courts Rules 1992 for an order that a witness be examined otherwise than at the time and place appointed for the hearing of the proceeding.
15. Filing application under rule 566 of the District Courts Rules 1992 or an order that any party be examined, for each party.
16. Application for charging order nisi or charging order absolute.
17. Filing affidavit in support of garnishee summons.
18. Issue of certificate of judgment or order.
19. For search in any Court book or of any documents.
20. Copy of any document, other than a document specified in item 21, per page.
21. Copy of notes of District Court Judge or Registrar, or of any judgment or order (other than a copy supplied to a party to the proceeding).
22. For faxing documents at the request of a party (except where documents have to be faxed for operational reasons).

23. For expenses of execution of any warrant of committal or writ of arrest.
24. For storage, cartage, and removal of goods, or advertising of goods for sale the actual and reasonable disbursements.
25. For each person left in possession of any premises.

### **Fees payable under the Sheriff's Fees Regulations 1988**

1. For every warrant on writ of sale, writ of arrest, attachment, or other process, including the application, execution, and return.
2. For advertising a sale: The amount actually paid.
3. For conducting a sale by auction: The amount actually paid to an auctioneer by way of commission.
4. For service of any summons beyond 1 kilometre from the Sheriff's office, a fee, at a rate to be determined by the Sheriff, for every kilometre one way.

### **Fees payable under the Summary Instalment Orders (District Courts) Rules 1970**

1. Application for a summary instalment order.

### **Fees Payable under the Customs and Excise Regulations 1996**

1. Application for appeal to be heard by Customs Appeal Authority.