



## Part 8 – Repayment conditions on a grant

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# General processes

## Overview of the repayment requirements

1. All grants of aid are subject to a condition that a repayment calculation be undertaken in accordance with s 15(2) and s 18 of the Act.
2. Some grants of aid are exempt from a requirement to make a repayment (interim and/or final repayment).
3. The maximum repayment that an aided person may be required to make is limited by the prescribed repayment amount, unless there are proceeds of proceedings. A repayment may not exceed the total cost of services.
4. A repayment:
  - may be secured by the Agency requiring the aided person to authorise a registered charge over property
  - may be secured by the Agency registering a caveat on the property
  - may be subject to interest or other debt recovery measures if payments are in default.
5. All proceeds of proceedings are subject to a charge, in the Agency's favour.

## Definitions

### Authorisation

A signed letter from the applicant agreeing to the conditions on a grant and authorising a charge to be registered over their specified asset for payment of a further contribution and/or as proceeds of proceedings.

### Caveat

A legal document that is registered with Land Information New Zealand against a title of land and records the Agency's interest over the property. It prevents the sale of the land without the Agency's consent but does not secure a specific debt amount.

### Charge

A legal interest in an asset that is formally registered, such as with Land Information New Zealand in the case of land or the Personal Property Securities Register in the case of most other assets. It secures the Agency's interest in the asset and the Agency's priority if the asset is sold. Refer also to statutory land charge.

### Capital

This is the total of the person's assets minus debts. This value is used for repayment assessments. Compare also to Disposable Capital.

### Deed of Assignment

A legal document that substitutes one person for another so that the person substituted assumes the rights or penalties of the other. In legal aid processes this means a Court executed document that transfers the legal aid costs to a respondent to repay, rather than the legally aided person.

	Deed of Subrogation is the same thing.
<b>Deed of Subrogation</b>	See Deed of Assignment.
<b>Disposable Capital</b>	This is the total of the person's assets minus debts and minus the value of assets and allowances set out in clause 3 of Schedule 1. This value is used for eligibility assessments only.
<b>Exceptional Circumstances</b>	<p>Describes any particular factor or combination of factors that is unusual, out of the ordinary, or uncommon in the context of the decision to be made and the particular facts of the case.</p> <p>When we use the term 'exceptional circumstance', we are referring to a factor or combination of factors that is an exception to a guideline or rule developed to deal with the ordinary run of cases.</p> <p>Policies which allow for exceptional circumstances give the Grants officer the discretion to depart from the guidelines in the event of the particular merits demanding such a departure.</p>
<b>Final repayment</b>	This is the value of the repayment owed to the Agency when the grant is finalised – same as Repayment Payable
<b>Interim repayment</b>	This is an amount paid to the Agency towards the cost of legal aid prior to the finalisation of the case and the determination of the legally aided person's final repayment. It is calculated according to s 17 of the Act and with reference to Agency policy. An interim repayment amount may be set when a grant is first approved for the matter.
<b>Interim repayment plan</b>	This is an arrangement to pay the interim repayment. It may involve payment from income and/or disposable capital. It can be varied in the course of the grant
<b>Maximum amount payable based on income (MAPI)</b>	This is the maximum value that an aided person may be expected to pay from income as a repayment. It is set when the grant is first approved and the amount is calculated according to Schedule 2 to the Regulations. Added to MAPC it gives the prescribed repayment amount.
<b>Maximum amount payable based on capital (MAPC)</b>	This is the maximum value that an aided person may be expected to pay from their assets as a repayment. It is set when the grant is first approved and the amount is calculated according to Schedule 1 to the Regulations. Added to MAPI it gives the prescribed repayment amount.
<b>Memorandum of Priority</b>	A legal document used to vary the priority of mortgages (priority order of debts owed) on a security document (such as a land title) or to increase the value of an existing priority.
<b>Prescribed repayment</b>	This is the sum of the maximum amount payable based on

<b>amount (PRA)</b>	income and capital (from Schedule 1 and 2 of the Regulations). It is the maximum amount that the aided person might have to repay to the Agency once the final repayment is calculated. This figure is set when a grant is first approved and is not changed during the life of the grant.
<b>Proceeds of Proceedings</b>	In relation to civil/family proceedings for which legal aid has been granted, means:  (a) any money or property which the aided person is entitled to recover or retain, under a judgment, an out-of-court settlement or order given in judicial proceedings; and  (b) any costs awarded or payable to the aided person under a judgment, out-of-court settlement or order given in judicial proceedings.
<b>Repayment</b>	The repayment is a debt due to the Agency, calculated in accordance with Section 18 of the Act. The value of the repayment is the repayment payable.
<b>Repayment payable</b>	This is the value of the repayment owed to the Agency when the grant is finalised– same as Final Repayment.
<b>Statutory Land Charge</b>	A legal document securing the Agency's interest (priority) against the title of land in the event of a default of repayment of debts to the Agency. It is registered with Land Information New Zealand. It prevents the sale of the land without the Agency's consent (compare with Caveat).

## Legislation

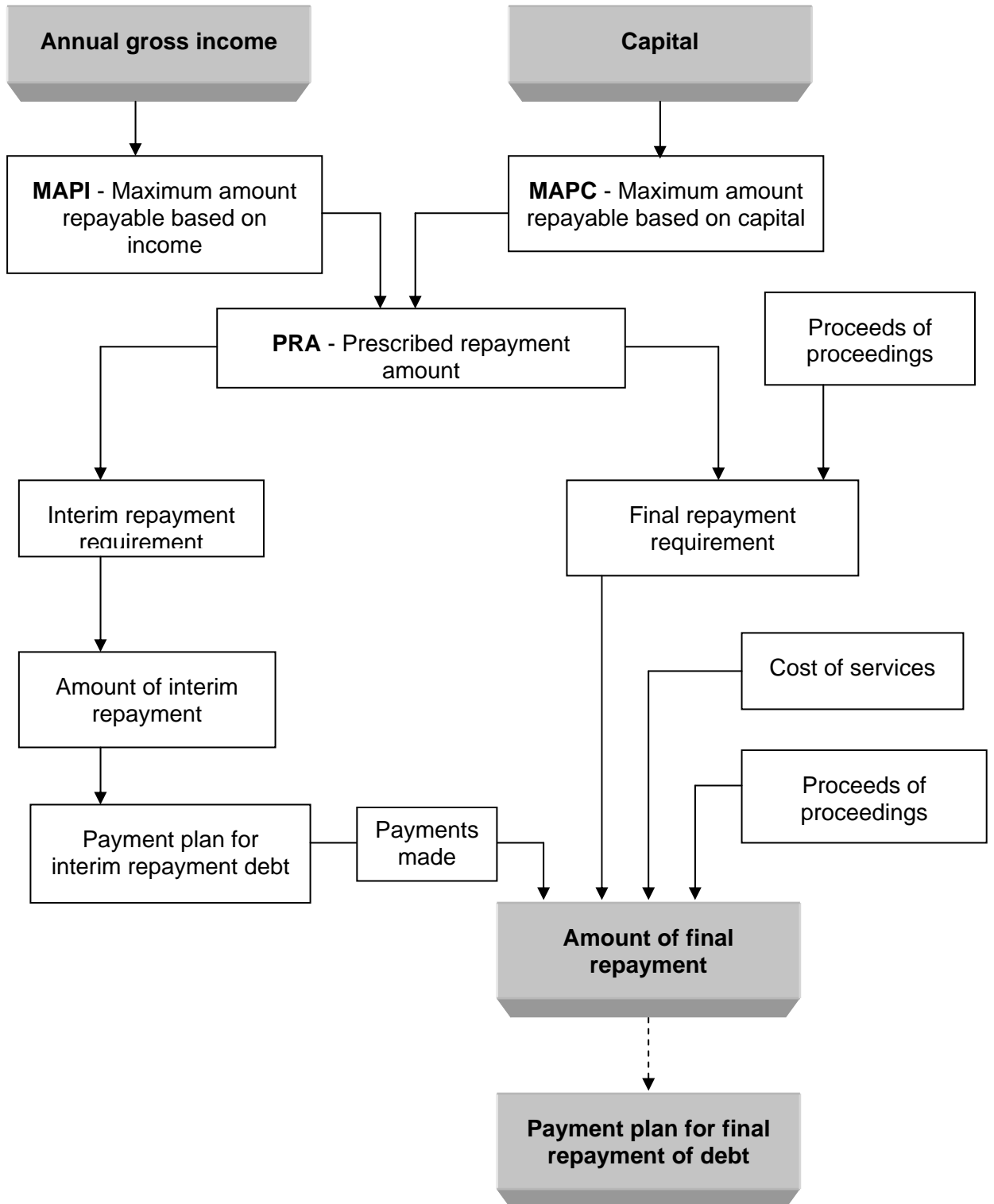
The key sections for setting conditions on a grant are:

- S 15 *Conditions on a grant of legal aid*, as amended by the Legal Services Amendment Act 2006
- S 6 *Special provisions ... to persons involved in proceedings under Domestic Violence Act 1995*
- S 17 *Interim repayments payable*, as amended by the Legal Services Amendment Act 2006
- S 18 *Amount of repayment payable*, as amended by the Legal Services Amendment Act 2006
- S 23 *Agency to keep aided person informed*
- S 30 *Amount payable by aided person to Agency*
- S 31 *Amounts payable under conditions of grant are debts due to Agency*, as amended by the Legal Services Amendment Act 2006
- S 32 *Charge on proceeds of proceedings*
- Schedule 1 *Definitions of income and disposable capital (including the definition of capital)*, as amended by the Legal Services Amendment Act 2006.

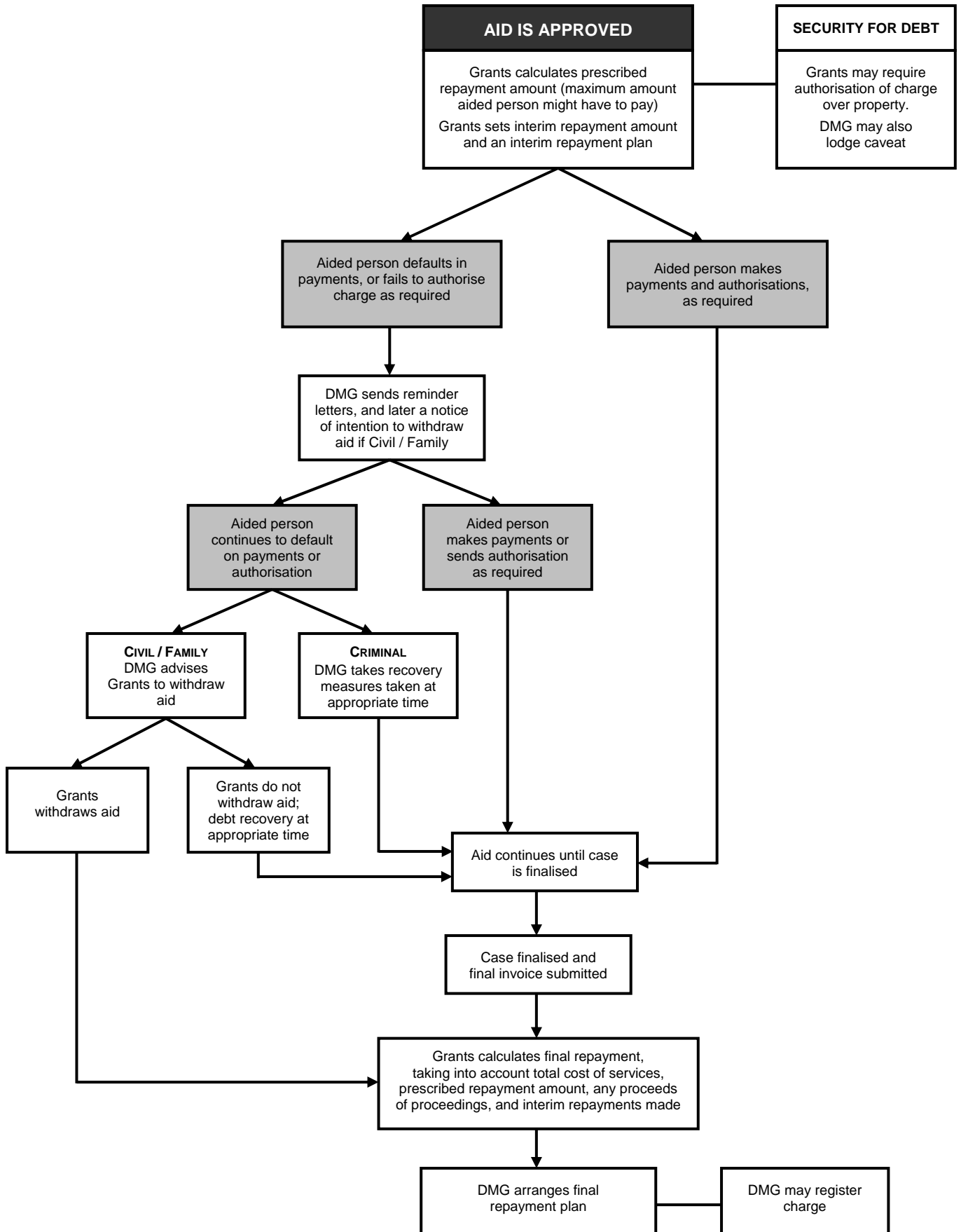
The key regulations are:

- Reg 10 Prescribed repayment amount
- Reg 11 Maximum amount payable based on capital (+ Sch 1)
- Reg 12 Maximum amount payable based on income (+ Sch 2)

## Setting repayment – summary flowchart



## Responsibilities for Setting and Managing Repayments



# Prescribed Repayment Amount

## When this procedure is used

The Grants Officer uses this procedure to determine and apply the prescribed repayment amount (PRA). This includes determining the maximum amount payable based on income (MAPI) and the maximum amount payable based on capital (MAPC).

## Legislation

The key sections of the Legal Services Regulations 2006 for determining prescribed repayment amount are:

- Regulations 10 to 12
- Schedules 1 and 2 of the Regulations

## Policy

The prescribed repayment amount (PRA):

- is used in the calculation of the final repayment
- may be used to set an interim repayment
- may be used in some scenarios in assessing sufficient means for criminal legal aid
- may be used to decide whether authorisation will be sought for a charge over property.

The Grants Officer needs to calculate the prescribed repayment amount and inform the legally aided person of this amount when aid is granted.

The prescribed repayment amount (PRA) is based on:

- gross household income,
- family size and
- capital.

The PRA is calculated at the time of the application according to the maximum amount payable based on income and capital, from Schedules 1 and 2 of the Regulations. The two parts are added together to represent the maximum amount the person could have to repay to the Agency, unless there are proceeds of proceedings.

## Procedure

### Summary of steps

There are five steps in determining the prescribed repayment amount (PRA).

- Assess the applicant's gross annual income
- Assess the applicant's capital

- Determine the size and composition of the applicant's family
- Select the maximum amount payable based on income (MAPI) and the maximum amount payable based on capital (MAPC) from the table
- Determine the prescribed repayment amount

There are several circumstances where the PRA is applied.

### **Assess the applicant's gross annual income**

The assessment of income for a repayment decision is the same as the assessment of income for the eligibility decision.

Step 1. The Grants Officer determines the applicant's gross annual income.

- Refer to the '*Financial assessment*' section in this manual for the procedure.
- Then go to step 2.

### **Assess the applicant's capital**

#### **Legislation**

Under clause 1 of Schedule 1 to the Act, capital is defined as

... *the person's total assets after deducting –*

- (a) *the amount of any debts secured against those assets; and*
- (b) *the amount of actual debts of the person, other than those that are secured.*



This means that when calculating the applicant's capital, the Grants Officer does not deduct at this stage items that are deducted in determining disposable capital, such as:

- any equity the applicant has in their house
- the value of the applicant's motor vehicle, household furniture, appliances and tools of trade.

The assessment of capital for the repayment decision uses the same *information* on capital as for the eligibility decision, but there are no allowances deducted.

Step 2. The Grants Officer determines the applicant's capital.

- Refer to the '*Financial assessment*' section in this manual for the procedure.
- Then go to step 3.

### **The size and composition of the applicant's family**



The maximum thresholds for the MAPI and MAPC vary with the size and composition of the family. This includes the applicant's spouse or partner and their financially dependent children. Dependent relatives other than children are not included.

Financially dependent children do not have to live in the same home as the rest of the family. However, the applicant or their partner must be making regular payments towards the maintenance of the children.

The dependent children do not have to be the applicant's children. The children of the partner may be included provided they are financially dependant on the combined income of the applicant and partner.


## Guidance

Note that:

- Dependent children are not defined in the Act
- There is no specific dollar value to establish financial dependency.
- There is no upper age limit for dependent children but the Grants Officer will enquire further into the nature of the financial dependency if the young person is 18 years or older.

This means that the Grants Officer will need to establish whether or not a child is financially dependant based the fact and circumstances of each case.

Step 3. The Grants Officer determines whether a child is financially dependent on the applicant, their partner or both (that is, the dependent on the combined household income)

If ...	then....
information given on the application form indicates that a child is fully or partly financially supported from the applicant's and partner's combined income	this is sufficient to establish that the child is financially dependent. Go to step 4.
a young person is accessing, or is eligible to access, an income in his/her own right (such as an income support benefit or student allowance)	the young person would not be counted as a financial dependent.  This applies even if the applicant or the applicant's partner choose to supplement the young person's income Go to step 4.

## The maximum amounts payable based on income and on capital



The maximum amounts payable are assessed only at the time the grant is first approved. These amounts are not revised at a later date, even if there has been a change in circumstances.

## Legislation

The key parts of Legal Services Regulations 2006 are:

- Schedule 1, *Maximum amount payable based on capital* (MAPC)

- Schedule 2, *Maximum amount payable based on income (MAPI)*.

Step 4. The Grants Officer identifies the income/capital band with the relevant threshold in the legislation

- The Means Calculator automatically calculates the MAPI, MAPC and the PRA.
- The MAPI or MAPC that applies to the applicant is the figure on each left hand column of tables 1 or 2 and 3.

### Maximum Amount Payable based on Income

**Table 1**


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

**Table 2**

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

**Table 3 Maximum amount payable based on capital**

<b>MAPC</b>	<b>Capital thresholds for single applicants without children \$</b>	<b>Capital thresholds for all other applicant \$</b>
\$0	0 - 1,500	0 - 2,000
\$50	1,501 - 1,900	2,001 - 2,400
\$145	1,901 - 2,300	2,401 – 2,800
\$270	2,301 - 2,700	2,801 – 3,200
\$430	2,701 - 3,100	3,201 – 3,600
\$625	3,101 - 3,500	3,601 – 4,000
\$850	3,501 - 3,900	4,001 – 4,400
\$1,090	3,901 - 4,300	4,401 – 4,800
\$1,270	4,301 - 4,500	4,801 – 5,000

<b>If ...</b>	<b>then....</b>
<p>the income or capital exceeds the MAPI or MAPC thresholds,</p> <p> This may happen if there were special circumstances found to justify aid.</p>	<p>all income/capital above the last figure on the row of relevant thresholds (based on family) is added to the last MAPI and/or MAPC figure in the left hand column.</p>
<p>Later, during the life of a grant, there is a change in the financial or family circumstances of the legally aided person (for example, if there is another child),</p>	<p>the Grants Officer will not increase or decrease the maximum amounts payable, unless eligibility has to be reassessed.</p> <p>The Grants Officer may have to reassess eligibility if, for example, incorrect or incomplete information was used to assess financial eligibility.</p> <p>Refer to the section <i>Seeking updated financial information</i> above.</p>

### **Determine the prescribed repayment amount**

Step 5. The Grants Officer determines the PRA.

- Add the MAPI and the MAPC to get the PRA.

## Applying the prescribed repayment amount

### Purpose of PRA is to set upper limit for repayment



An interim or final repayment amount may not exceed the PRA. The exception to this is the situation where both the proceeds of proceedings and the cost of services for those proceedings exceed the PRA.



Refer to part 10 of this manual for further detail on the calculation of Final Repayment

### PRA that is \$0



If the PRA is zero, the applicant will not have an interim repayment and there will be no final repayment unless there are proceeds of proceedings.

### PRA if the grant is exempt from repayment

If the proceeding is exempt from a repayment there will not be any debt recovery action.

### PRA in Agency policy on ‘sufficient means’ in criminal cases

There are two scenarios in the assessment of sufficient means that use PRA figures. If the MAPI and MAPC meet the criteria set out in those scenarios, it is taken that the applicant does not have sufficient means.



Refer to **Part 5 Eligibility for criminal legal aid** in this manual.

### Applicant seeks reconsideration or review of the PRA

The decisions made in the income or capital assessment on which the PRA is based are subject to reconsideration or review. In this sense, the PRA can be regarded as a decision.

The Grants Officer will undertake any reconsideration or write any review submission that relates to the PRA.

### Further information required to set the PRA

If ...	then....
the Grants Officer has been unable to calculate the PRA because there is insufficient financial information available,	it is likely that eligibility has not been able to be assessed either. The Grants Officer has the discretion to: <ul style="list-style-type: none"> <li>▪ Grant aid on an interim basis, or</li> <li>▪ Refuse aid under s 9(4)(a) if the Grants Officer is <i>unable to obtain full information concerning the applicant's financial affairs because of the default</i></li> </ul>

If ...	then....
	<i>or failure of the applicant.</i>
circumstances require that an interim grant is made	<p>the Grants Officer will advise the applicant that:</p> <ul style="list-style-type: none"> <li>▪ the grant is subject to the condition that a repayment may be required, calculated in accordance with s18 when the additional information is submitted</li> <li>▪ the information must be submitted within a given time period.</li> </ul> <p>The time period selected must be reasonable and take into the account type of information being requested and how easily it may be accessed. For example:</p> <ul style="list-style-type: none"> <li>▪ 20 working days from the date the letter is received for information about a trust will be appropriate.</li> <li>▪ 5 working days for copy of statement of shares or updated pay slip is sufficient.</li> </ul>

# Is a repayment required?

## When this procedure is used

This procedure is used to identify and manage grants:

- that are *always* exempt from repayments
- that are *always* exempt from *interim* repayments
- where Agency policy does not require an interim repayment to be set
- that Grants Officers may use their discretion whether or not to set an interim repayment on
- where Grants Officers have the discretion to waive a requirement that the person (representative) under whose name the legal aid application is made will pay any repayment
- where there are exempt and non-exempt matters under the same grant.

## Legislation

The key sections of the Legal Services Act 2000 are:

- s13 *Special provisions relating to minors and mentally disordered persons*
- s15 *Conditions on a grant of legal aid*
- s16 *Special provisions about conditions on a grant to persons involved in proceedings under the Domestic Violence Act 1995*
- s 17(2) *Interim repayments payable*
- s18(6) *Amount of repayment payable* [victims claims proceedings]

## Policy

### Exempt from repayments (interim and final)

Under the Legal Services Act 2000, the following grants of legal aid are exempt from interim repayments **and** (final) repayments:

- a grant to a proposed patient in proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (s15(6)(b) of the Act)
- a grant to a proposed care recipient in proceedings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (s15(6)(c) of the Act).

### Exempt from interim repayments

Under the Legal Services Act 2000, the following grants of legal aid are exempt from interim repayments:

- Grants under s42 in respect of Waitangi Tribunal proceedings
- Grants in respect of victims' claims proceedings under the Prisoners' and Victims' Claims Act 2005:

- Section 15(5)(a) of the Act prevents the Agency from imposing an interim repayment when aid is first granted.
- However, under s15(5)(b), it is possible to set an interim repayment on an *amendment* to the grant.
- Agency policy is that, unless there are special circumstances, interim repayments **are not** required for amendments of grants to victims of crime in respect of victims' claims proceedings under the Prisoners' and Victims' Claims Act 2005.
- For more detail, see 'Legal Aid for Prisoners' and Victims' Claims Proceedings' in **Part 4** of this manual.

## Agency policy – interim repayments not required

An interim repayment is a discretionary condition on a grant of legal aid. Agency policy is to **not** require interim repayments for the following grants unless there are exceptional circumstances:

- Criminal Summary (PC1) files
- Grants to persons to file a review application to LARP (see 'Legal Aid for LARP Reviews' in **Part 4** of this manual)
- Grants to respondents involved in an appeal to the High Court by the Agency against a LARP decision
- Grants to persons falling under s23 of the Coroners Act 2006 (eg immediate family members) in respect of proceedings under that Act
- Grants to victims of crime in respect of proceedings under the Victims' Rights Act 2002
- Grants to victims of crime in respect of proceedings under the Parole Act 2002
- Amendments of grants to victims of crime in respect of victims' claims proceedings under the Prisoners' and Victims' Claims Act 2005.
- Civil grants to minors under s16 or mentally disordered persons
- Grants to persons who qualify as a s16 "person A", in respect of proceedings under the following Acts that arise in connection with proceedings under the Domestic Violence Act 1995:
  - the Care of Children Act 2005,
  - the Children, Young Persons, and Their Families Act 1989, or
  - the Family Proceedings Act 1980.

In other situations there is discretion whether or not to set an interim repayment.

Grants Officers considering imposing an interim repayment due to exceptional circumstances on one of the following matters **must** request a recommendation from a National Specialist Adviser:

- Grants to persons to file a review application to LARP
- Grants to respondents involved in an appeal to the High Court by the Agency against a LARP decision
- Grants to persons falling under s23 of the Coroners Act 2006 in respect of proceedings under that Act
- Grants to victims of crime in respect of proceedings under the Victims' Rights Act 2002

- Grants to victims of crime in respect of proceedings under the Parole Act 2002
- Amendments of grants to victims of crime in respect of victims' claims proceedings under the Prisoners' and Victims' Claims Act 2005.

## Setting an interim repayment

If a repayment is required, this does **not** mean that an interim repayment must be set. In deciding whether or not to set an interim repayment the Agency will consider:

- the guidance provided by tables 1 and 2 in Schedule 2 of the Act<sup>1</sup>
- any matter in the information available that indicates that the applicant will have difficulty paying the amounts of any instalments in the plan.
- the amount of the repayment – the lower the amount of the repayment, the less likely it is that an interim repayment should be set.

The plan will take into account the applicant's ability to pay, unless reasons why such interim repayments cannot occur are accepted by the Agency.

## Procedure

### Exempt from interim and/or final repayment



Step 1. The Grants Officer determines if the grant of aid is exempt from an interim repayment *and/or* a final repayment under the Act.

If...	then...
legal aid is for a proposed patient in proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992,	under s15(6)(b) of the Act, the grant is exempt from an interim repayment <i>and</i> a final repayment. End of process.
legal aid is for a proposed care recipient in proceedings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003,	under s15(6)(c) of the Act, the grant is exempt from an interim repayment <i>and</i> a final repayment. End of process.
the grant is for Waitangi Tribunal proceedings,	under s15(6)(a), s42 grants for Waitangi Tribunal proceedings are exempt from <i>interim</i> repayments. End of process.
the grant is an <i>initial</i> grant for a victims' claims proceeding under the Prisoners' and Victims' Claims Act 2005,	under s15(5)(a) of the Act, such a grant is exempt from an <i>interim</i> repayment. End of process.
the grant is not exempt under these sections of the Act,	Go to Step 2, <i>Determine whether to set an interim repayment.</i>

<sup>1</sup> These tables should be used as indicative, rather than determinative. The Grants Officers need t consider these tables in conjunction with all other factors relative to the case.

## Is an interim repayment required or not?

Step 2. The Grants Officer determines whether to set an interim repayment.


If...	then...
the grant is for an immediate family member to attend Coroner's proceedings under s23 of the Coroners Act 2006,	an interim repayment is <b>not</b> required unless there are exceptional circumstances.
the grant is for a victim of crime in respect of proceedings under the Victims' Rights Act 2002	The Grants Officer <b>must</b> request a recommendation from a National Specialist Adviser if they: <ul style="list-style-type: none"> <li>▪ have identified exceptional circumstances and</li> <li>▪ are considering imposing an interim repayment.</li> </ul>
the grant is for a victim of crime in respect of proceedings under the Parole Act 2002,	 Note that there can be <b>no</b> proceeds of proceedings from Coroners', Parole and Victims' Rights proceedings. However, a final repayment may still be required if the aided person's PRA is greater than \$0.
the Grants Officer approves an amendment to a grant of aid to a victim for victims' claims proceedings under the Prisoners' and Victims' Claims Act 2005,	an interim repayment is <b>not</b> required unless there are exceptional circumstances. The Grants Officer <b>must</b> request a recommendation from a National Specialist Adviser if they: <ul style="list-style-type: none"> <li>▪ have identified exceptional circumstances and</li> <li>▪ are considering imposing an interim repayment.</li> </ul>  Note that: <ul style="list-style-type: none"> <li>▪ proceeds of proceedings <b>are</b> possible for victims' claims proceedings under the Prisoners' and Victims' Claims Act 2005</li> <li>▪ under s18(5), the PRA for victims' claims proceedings is zero.</li> </ul> Any final repayment is to be taken from proceeds of proceedings <i>only</i> . That is: <ul style="list-style-type: none"> <li>▪ there is no repayment required if there are no proceeds of proceedings</li> <li>▪ there is a repayment required to the level of the proceeds if the proceeds are less than the costs of services</li> <li>▪ there is a repayment required up to the cost of services if the proceeds equal or exceed the cost of services.</li> </ul>
the grant is for: <ul style="list-style-type: none"> <li>▪ the aided person to file a review application to LARP, or</li> </ul>	given that the Agency is the other party in these proceedings, an interim repayment is <b>not</b> required unless there are exceptional circumstances.

If...	then...
<ul style="list-style-type: none"> <li>▪ a respondent involved in an appeal to the High Court by the Agency against a LARP decision</li> </ul>	<p>The Grants Officer <b>must</b> request a recommendation from a National Specialist Adviser if they:</p> <ul style="list-style-type: none"> <li>▪ have identified exceptional circumstances and</li> <li>▪ are considering imposing an interim repayment.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Criminal summary (PC1) charges</li> </ul>	<p>The Grants Officer must discuss this with their Team Leader if they have identified exceptional circumstances and are considering imposing an interim repayment.</p>
<p>an interim repayment will not be set,</p>	<p>The Grants Officer will record the decision and the reasons for it. The Debt Officer will advise the aided person and their provider.</p> <p>End of process.</p>
<p>the grant is for Domestic Violence Act proceedings</p>	<p>Go to Step 3, <i>The Grants Officer determines if domestic violence proceeding is exempt.</i></p>
<p>for another person who is a minor or mentally disordered,</p>	<p>Go to Step 6, <i>Action if the grant is for another person (minor or mentally disordered).</i></p>

## Domestic violence proceedings

Step 3. The Grants Officer determines if a domestic violence proceeding is exempt.

If...	then...
<p>the original applicant in the Domestic Violence proceedings is applying for, or defending an application to discharge the order(s),</p>	<p>they <b>are</b> exempt from repayment.</p>
<p>the original respondent in the Domestic Violence proceedings is applying for, or defending an application to discharge the order(s),</p>	<p>they <b>are not</b> exempt from repayment.</p>
<p>the applicant is party to any proceedings (including appeals) that relate to or arise out of:</p> <ul style="list-style-type: none"> <li>▪ a protection order or property order made under the Domestic Violence Act 1995 in favour of that person, or</li> <li>▪ an application for one of those orders made by that person or on their behalf.</li> </ul>	<p>unless there are <i>exceptional circumstances</i>, a grant of legal aid is exempt from repayments under s16 of the Act.</p>
<p>there are other proceedings under the grant of aid in addition to the to proceedings under the Domestic Violence Act 1994</p>	<p>under s16(4), '<i>...the Agency may impose conditions on the part of the grant that relates to those additional matters.</i>'</p> <p>Go to Step 4, <i>The Grants Officer determines</i></p>

If...	then...
	<i>whether the additional proceedings are exempt under s 16(1).</i>
<p>there are <i>exceptional circumstances</i> and the Grants Officer intends to impose a repayment requirement on a DVA applicant,</p> <p> <i>Exceptional circumstances</i> may include, but are not limited to, situations where the applicant has equity in excess of \$250,000.</p>	<p>the Grants Officer will refer the file to a Specialist Adviser for a recommendation.</p> <p>It is not expected that the Agency will use the <i>exceptional circumstances</i> discretion to require a repayment, including interim repayment very frequently.</p> <p>If the applicant has equity under \$250,000 then a repayment will generally <b>not</b> be considered.</p>
<p>the Specialist Adviser recommends that an interim repayment be imposed on the grounds that there are <i>exceptional circumstances</i>,</p>	<p>the Grants Officer considers the Specialist Advisers recommendation.</p> <p>End of process.</p>
<p>the Specialist Adviser recommends that an interim repayment <i>not</i> be imposed,</p>	<p>the Grants Officer will record the decision and the reasons for it. The Debt Officer will advise the aided person and their provider.</p> <p>End of process.</p>

### Additional proceedings



Under s16(1) of ‘...proceedings (which includes appeals) that in any way relate to or arise out of, an application...for a protection order ...’ may also be exempt from repayments.

Step 4. The Grants Officer determines whether the additional proceedings are exempt under s16(1) (where the main matter type is a DVA-applicant matter).

If ...	Then...
<p>the Grants Officer intends to apply this provision</p>	<p>The Grants Officer must be satisfied that the non-DVA matter is so intertwined or interrelated with the DVA proceedings, that</p> <ul style="list-style-type: none"> <li>▪ the DVA matter would most likely not be able to be taken alone, or</li> <li>▪ would not be successful if taken alone or</li> <li>▪ it is not practicable or advisable to be taken alone</li> </ul>
<p>the non-DVA matter meets these criteria,</p>	<p>the matter will be exempt from a repayment (including interim repayment).</p> <p>End of process.</p>
<p>the non-DVA matter does <b>not</b> meet these criteria,</p>	<p>Go to Step 5, <i>The Grants Officer considers imposing a repayment requirement on a non-DVA</i></p>

If ...	Then...
	<i>matter.</i>

Step 5. The Grants Officer considers imposing a repayment requirement on a non-DVA matter.



If a repayment is to be set on part of a grant which is for non-DVA matters, the Agency must consider the requirements of s16(5).

If ...	then...
<ul style="list-style-type: none"> <li>▪ the <b>non-DVA</b> matter is not related to the DVA proceedings in any substantive way (eg, adoption, personal property rights)</li> <li>▪ the court will hear the matters separately</li> <li>▪ the <b>DVA matter</b> could still be successful if taken alone,</li> </ul>	the Grants Officer may consider imposing a repayment on the non-DVA matter.
the Grants Officer intends to set a repayment on part of a grant which is for non-DVA matter,	<p>the Grants Officer will:</p> <ul style="list-style-type: none"> <li>▪ discuss this with their Team Leader</li> <li>▪ advise the aided person and their provider: <ul style="list-style-type: none"> <li>- what proportion of the grant will be subject to the repayment conditions, and</li> <li>- what those repayment conditions will be and</li> <li>- the reasons for imposing a repayment.</li> </ul> </li> <li>▪ consider any submission from the applicant or their provider about having those non-DVA matters also exempted from a repayment requirement.</li> </ul>
the Grants Officer accepts the applicant's (or their provider's) submissions,	<p>the Grants Officer:</p> <ul style="list-style-type: none"> <li>▪ has the discretion to set or <i>not</i> to set a repayment on the non-DVA matter.</li> <li>▪ will advise the applicant and their provider of the decision and explain how the decision was made.</li> </ul> <p>End of process.</p>
the Grants Officer does <b>not</b> accept the applicant's (or their provider's) submissions,	<p>the Grants Officer:</p> <ul style="list-style-type: none"> <li>▪ may set a repayment on the non-DVA matter with the agreement of their Team Leader</li> <li>▪ will advise the applicant and their provider of the decision and explain how the decision was made.</li> </ul> <p>End of process.</p>

## If the application was made on behalf of a minor or mentally disordered person



Under s13(5), the Agency may waive a requirement that the person (representative) under whose name the proceedings are taken or defended will pay any repayment.

Step 6. Action if the grant is for another person (minor or mentally disordered).

If the grant is for ...	then...
a minor who is under 16 years or between 16 years and 20 years old in a <b>civil/family</b> matter,	go to Step 7, <i>The Grants Officer determines whether or not to waive the requirement that the other person making the application undertake to pay any repayment required under the grant in a <b>civil/family</b> matter.</i>
a minor who is under 16 years or between 16 years and 20 years in a criminal matter	Go to Step 8, <i>The Grants officer determines whether or not to waive the requirement that the other person making the application undertake to pay any repayment required under the grant in a <b>criminal</b> matter</i>
a mentally disordered person,	go to Step 9, <i>The Grants Officer determines whether or not to waive the requirement that the other person making the application undertake to pay any repayment required under the grant where the applicant is mentally disordered.</i>

Step 7. The Grants Officer determines whether or not to waive the requirement that the other person making the application undertake to pay any repayment required under the grant in a **civil/family** matter.

If...	then...
<p>the minor is under 16 years old, <b>and</b></p> <ul style="list-style-type: none"> <li>▪ the minor and either parent have contrary interests in the matter of the proceedings (eg: they are opposing parties to the proceedings or have opposing interests in the outcome of the proceedings), or</li> <li>▪ the parent is living apart from or does not have the day-to-day care responsibility, or</li> <li>▪ the minor is supporting him/herself without financial assistance from the parent,</li> </ul>	<p>the Grants Officer:</p> <ul style="list-style-type: none"> <li>▪ may waive the requirement that the parent making the application undertake to pay any repayment required under the grant.</li> <li>▪ will advise the other person applying on behalf of the applicant and their provider that the requirement that they undertake to pay any repayment under the grant has been waived under s 13(5).</li> </ul> <p>End of process.</p>
there is any sum paid or payable under any agreement or court order to another person for the purpose of maintaining the applicant,	<p>the Grants Officer:</p> <ul style="list-style-type: none"> <li>▪ may decide <b>not</b> to waive the requirement to repay.</li> <li>▪ will advise the other person applying on behalf</li> </ul>

If...	then...
	<p>of the applicant and their provider that the sum paid or payable to them has been included in the repayment assessment.</p> <p>End of process.</p>
<p>the minor is:</p> <ul style="list-style-type: none"> <li>▪ 16 years or over but under 20 <b>and</b></li> <li>▪ an applicant in a civil/family matter</li> </ul>	<p>the Grants Officer may decide <b>not</b> to waive the requirement to repay in the following situations:</p> <ul style="list-style-type: none"> <li>▪ there is a person under an agreement or court order who is liable to wholly or partly maintain the minor/applicant</li> <li>▪ there is a parent, foster parent or step parent with whom the minor/applicant is living</li> <li>▪ there is a sum paid or payable under any agreement or court order to another person for the purpose of maintaining the applicant.</li> </ul>
<p>the Grants Officer is considering imposing a repayment in circumstances not covered above,</p>	<p>the file will be referred to a Specialist Adviser for a recommendation.</p>

## Step 8.

If...	then...
<p>the minor is 16 years or over in a criminal matter,</p>	<p>The Grants Officer:</p> <ul style="list-style-type: none"> <li>• may waive the requirement that the parent making the application undertake to pay any repayment required under the grant.</li> <li>• Will advise the other person applying on behalf of the applicant and their provider that the requirement that they undertake to pay any repayment under the grant has been waived under s13(5).</li> </ul> <p>End of process.</p>
<p>the minor is under 16 years and appears in a criminal court,</p>	<p>The Grants Officer:</p> <ul style="list-style-type: none"> <li>• may decide <b>not</b> to waive the requirement for the parent (including foster parent or step parent) to undertake to pay any repayment under the grant.</li> <li>• Will advise the other person applying on behalf of the applicant and their provider that the sum paid or payable to them has been included in the repayment assessment.</li> </ul> <p>End of process.</p>
<p>the minor is 16 years or over and is receiving significant support from his/her parents,</p>	<p>The Grants Officer:</p> <ul style="list-style-type: none"> <li>• may decide <b>not</b> to waive the requirement for</li> </ul>

If...	then...
	<p>the parent (including foster parent or step parent) to undertake to pay any repayment under the grant.</p> <ul style="list-style-type: none"> <li>• Will include the value of any payments, goods or services, transport or accommodation supplied by the parents in the repayment assessment. This may be the case where the minor lives at home and is financially dependant.</li> <li>• Will advise the other person applying on behalf of the applicant and their provider that the sum paid or payable to them has been included in the repayment assessment.</li> </ul> <p>End of process.</p>
The Grants Officer is considering imposing a repayment in circumstances not covered above,	<b>refer</b> the file to a Specialist Adviser for a recommendation.

Step 9. The Grants Officer determines whether or not to waive the requirement that the other person making the application undertake to pay any repayment required under the grant where the applicant is **mentally disordered**.



**Note:** this step covers section 13 *Special provisions relating to minors and mentally disordered persons* of the Legal Services Act 2000. This step does **not** refer to the Mental Health (Compulsory Assessment and Treatment) Act 1992.

If...	then...
the other person making the application is not responsible (financially or otherwise) for the mentally disordered person,	<p>the Grants Officer:</p> <ul style="list-style-type: none"> <li>▪ may waive the requirement that the other person making the application undertake to pay any repayment required under the grant.</li> <li>▪ will advise the other person applying on behalf of the applicant and their provider that the requirement that they undertake to pay any repayment under the grant has been waived under s13(5).</li> </ul> <p>End of process.</p>
the other person making the application on behalf of the mentally disordered person is liable to wholly or partly maintain the applicant under an agreement or court order,	<p>the Grants Officer may decide <b>not</b> to waive the requirement for the other person to undertake to pay any repayment under the grant.</p> <p>For example, where the applicant is:</p> <ul style="list-style-type: none"> <li>▪ 16 years or over but under 20 <b>and</b></li> </ul>

If...	then...
	<ul style="list-style-type: none"> <li>▪ living with, or dependant on, the person making the application.</li> </ul> <p>The Grants Officer will advise the other person applying on behalf of the applicant and their provider that the sum paid or payable to them has been included in the repayment assessment.</p> <p>End of process.</p>
<p>there is any sum paid or payable to the other person under any agreement or court order for the purpose of maintaining the applicant,</p>	<p>the Grants Officer:</p> <ul style="list-style-type: none"> <li>▪ may decide <b>not</b> to waive the requirement for the other person to undertake to pay any repayment under the grant.</li> <li>▪ will advise the other person applying on behalf of the applicant and their provider that the sum paid or payable to them has been included in the repayment assessment.</li> </ul> <p>End of process.</p>
<p>the Grants Officer is considering imposing a repayment condition on the other person's resources in circumstances not covered above,</p>	<p>the file will be referred to a Specialist Adviser for a recommendation.</p>

# Setting the interim repayment plan

## When this procedure is used

These steps are used to:

- determine the amount of the interim repayment
- set the payment plan
- change a payment plan,

## Legislation

The key sections of the Legal Services Act 2000 and Regulations for setting an interim repayment amount and plan are:

- Section 15 *Conditions on a grant of legal aid*
- Section 17 *Interim repayments payable*
- Section 31 *Amounts payable under conditions of a grant are debts due to Agency*
- Reg. 10 *Prescribed repayment amount*
- Reg. 11 *Maximum amount payable based on capital*
- Reg. 12 *Maximum amount payable based on income*

## Policy

### Introduction

The Agency may require an aided person, as a condition on a grant, to pay an interim repayment. The Agency may require the aided person to start making interim repayments at any time after aid has been granted.

The interim repayment is a set amount that does not vary during the life of the grant, other than as a result of reconsideration or review.

### Determining the interim repayment amount

The interim repayment amount is:

- the total amount to be paid while the case is active,
- based on an amount the Agency considers appropriate given its experience of comparable matters and the circumstances of each case.

There are four options for determining the interim repayment amount:

- the likely costs of comparable cases for that matter/proceeding
- the MAPI portion of the applicant's prescribed repayment amount (that is, in this option only the MAPI is considered)
- a repayment amount related to nature of the applicant's means, or
- an amount related to the provider's estimate of the total likely cost of the case.

The Agency will:

- consider all four options before setting an interim repayment amount
- select the appropriate option based on the information supplied by the client and the provider
- select the lowest interim repayment amount.

Where there is insufficient information about one or more of the four options, the decision will be based on the information available.



The interim repayment amount under any option must never be higher than the PRA.

## Setting the interim repayment plan

The Agency will propose a plan for the payment of the interim repayment. The plan may involve payment from the applicant's income and/or disposable capital.

In setting the plan, the Agency will take into account the principle that debt is to be repaid:

- within five years from when the grant is made if the amount to be repaid is from the aided person's income, or
- within seven years from when the grant is made if the grant is to be paid from the aided person's income and capital.

The Agency will consider requests to amend, defer or temporarily halt payments under the plan if the aided person is unable to make payments in the plan (see section on Setting an alternative interim repayment plan or amending the interim repayment plan.)

Once the interim repayment is paid, no further interim repayment will be required until the matter is finalised

## Interim repayment plan based on income

If an interim repayment plan is based on income the Agency will require payment to be commenced as soon as possible after aid is granted.

It will be based on set, regular repayments and will reflect the aided person's ability to sustain regular repayments and the principle of repayment within five years. As outlined in the section above the Agency will publish interim repayment plans based on regular income payments for a range of matters for households in different income bands.

The Agency will not collect money in excess of the likely cost of services but the total value of regular payments may be in excess of the actual costs of services to date in some points in the duration of the grant.

## Interim repayment plan based on capital

The Agency will only establish an interim repayment plan based on disposable capital when the applicant has capital that consists of cash assets, near-cash assets (such as shares) or property other than the home.

If an interim repayment plan includes or is based on capital, the Agency will require this to be paid as soon as possible after aid is granted.

If the plan includes additional payments based on income, the policy on interim repayment based on income will apply and will reflect the aided person's ability to pay and the principle of repayment within five years.

The Agency will not collect money in excess of the likely cost of services but may require payment in excess of the actual costs of services to date.

## Procedure

### Likely cost

Step 1. The Grants Officer considers the likely costs of proceedings in the table below.

The purpose of the Likely Cost table is to set a realistic interim repayment amount if the applicant has a high MAPI. For example, if a PC1 case is likely to cost \$300 but the applicant has a MAPI of \$7,540. It is designed to cover the majority of cases.

Matter/Proceeding Type	Likely Cost
Summary offence – guilty plea	\$250
Other PC1 and PC2 (excluding serious fraud)	\$630
PC3, PC4 and serious fraud	\$6,000
Family – except Property and DV (respondent)	\$1,690
Family – Property	\$2,810
DV (respondent)	\$1,650
ACC and Employment	\$1,700
All other civil matters	\$4,360

Go to Step 2, *The Grants Officer considers the applicant's MAPI.*

### MAPI portion of prescribed repayment amount

Step 2. The Grants Officer considers the applicant's MAPI.

The applicant's MAPI will usually be one of the figures in the table below.

<b>Schedule 2, Maximum amount payable based on income</b>					
\$1,300	\$2,860	\$4,420	\$5,980	\$7,540	\$10,000

Go to step 3, *The Grants Officer considers the provider's estimate.*

### Provider's estimate

The Agency's standard clause codes offer the client and provider the option of submitting an estimate of case costs if they believe that the interim repayment amount is too high. The provider may also choose to submit an estimate of the cost of the case with the legal aid application. Where this occurs, the Grants Officer will need to consider the provider's estimate when setting the interim repayment amount.

Step 3. The Grants Officer considers the provider's estimate.

If...	then...
<ul style="list-style-type: none"> <li>▪ the estimate covers the total likely cost of the case <b>and</b></li> <li>▪ the case is not covered by the Agency table of likely costs <b>or</b></li> <li>▪ the case is covered by the Agency table but has unusual features which means the costs cannot be compared</li> </ul>	<p>the Grants Officer may set the interim repayment amount based on the provider's estimate.</p> <p>The interim repayment amount must not exceed the applicant's MAPI or the value of realisable/sellable assets (see <i>Nature of applicant's means</i> below).</p> <p>Go to step 4, <i>The Grants Officer considers the applicant's income means.</i></p>

### Nature of applicant's income and capital means

There is discretion as to the amount of an interim repayment based on the applicant's income and capital means.

Step 4. The Grants Officer considers the applicant's income means

Consider	Guidance
Whether the amount of annual income of the aided person that is in excess of the threshold for a repayment.	<p>The Grants Officer may set an amount less than the lowest of the MAPI portion of the prescribed repayment amount, the likely cost and the provider's estimate.</p> <p>Go to step 5, <i>The Grants Officer considers the nature of the applicant's capital means.</i></p>
Any matter in the information available that indicates that the applicant will have difficulty paying the lowest of the MAPI portion of the prescribed repayment amount, the likely cost and the provider's estimate.	

Step 5. The Grants Officer considers the nature of the applicant's capital means.

The most likely situation in which this can be used as the basis for setting an interim repayment amount will be where the applicant has some realisable/sellable assets, and

- the net value is less than \$1,500 (for a single applicant with no children) or
- \$2,000 (for all other applicants).

If...	then...
<p>the applicant has:</p> <ul style="list-style-type: none"> <li>▪ realisable or sellable assets, or</li> <li>▪ a second property</li> </ul>	setting the interim repayment on the basis of the nature of the applicant's means may be appropriate
<p>the applicant:</p> <ul style="list-style-type: none"> <li>▪ has a MAPI of \$0 but has a MAPC greater than \$0, <b>and</b></li> <li>▪ has some assets that may be relatively easily realised in the short term, <b>and</b></li> <li>▪ the value of those is up to or less than the likely cost of services or PRA.</li> </ul>	the Grants Officer may set the interim repayment amount at the value of those realisable/sellable assets but not more than the likely cost of services (see table above).

If...	then...
the applicant has a second property,	<p>the Grants Officer may set the interim repayment amount at the likely cost of services.</p> <p>The Grants Officer will assume that the applicant has sufficient equity in this property to pay their repayment.</p> <p>Go to step 6, <i>Other options</i></p>

### Other situations

In some situations it may be clear that the Likely Cost table is unrealistic.

Step 6. The Grants Officer considers whether there is a situation which means that the likely cost table should not apply

For example, if:

- the applicant's MAPI was \$22,000, and
- the Likely Cost was \$630 and
- the maximum grant sought was \$18,000, then the Likely Cost table is clearly unrealistic.

A maximum grant of \$18,000 indicates that the likely cost of proceedings drawn from the table is unrealistic and the provider's estimate of the cost of case would be much higher. The case is likely to cost \$18,000, and therefore an interim repayment of \$18,000 would be the lower of the likely cost and the MAPI.


Step 7. The Grants Officer selects the appropriate option:

- Compare the information available about the:
  - Likely Cost of proceedings
  - MAPI
  - Provider's estimate
  - Nature of the applicant's means.
- Select the lowest amount as the interim repayment amount.
- Go to step 7 *The Grants Officer selects the best option for payment below.*

### Select the best method for making payments

Step 8. The Grants Officer selects the best option for making payments.

Consider	Guidance
Setting up an instalment plan – a payment of regular set amounts	<p>Select the instalment plan option if the applicant has a MAPI greater than \$0. That is, a regular income from which instalment payments can be made. Mostly the instalment plan will be based on automatic payments from a bank account.</p> <p>Go to <i>Instalment plan</i> step 1, below.</p>
Lump sum payment plan – a one off payment	The Grants Officer may choose this option if the applicant:

Consider	Guidance
	<ul style="list-style-type: none"> <li>▪ has a MAPC, which includes assets that may relatively easily be sold, drawn on or against which a loan may be raised. It is not necessary for these assets to be the total value of all assets on which the MAPC is set.</li> </ul> <p>Assets which may be considered are:</p> <ul style="list-style-type: none"> <li>▪ money held in a bank account</li> <li>▪ shares or investment funds</li> <li>▪ income related insurance</li> <li>▪ a second property (not the family home).</li> </ul> <p> Note that identifying assets that may be used to pay an interim repayment is not the same as identifying property on which a charge may be placed to secure repayment debt. The Agency would not expect the applicant to sell such property to make a repayment.</p> <p>Go to <i>Lump sum payment plan</i>, step 1, below.</p>
Combination – an instalment plan with a variable (higher) first payment (a lump sum) followed by regular set amounts	<p>The Grants Officer may select the combination option if the applicant:</p> <ul style="list-style-type: none"> <li>▪ has the MAPI to sustain regular instalments and</li> <li>▪ an asset to make a lump sum payment</li> </ul> <p>It is possible that the MAPC may be \$0 in this option (ie the value of the assets may be less than the threshold for a MAPC).</p> <p>Go to <i>Combination payment plan</i>, step 1 below.</p>

## Set up the interim repayment plan



If an interim repayment is payable, the Agency will require the legally aided person to start making payments within 23 working days from receipt of the letter notifying that aid is granted.

Compliance by the aided person with the requirement to start payments within the given period will be monitored by the Debt Management Group.

## Instalment plan

The Weekly Instalments table below sets out the Agency's recommended weekly payment rates in relation to the different matter/proceeding groups. These weekly instalment amounts:

- have been set at levels most likely to be sustained by an aided person over time.
- have been set by using information about the likely cost of comparable cases,
- will usually ensure that the debt is paid within 5 years.

Step 1. The Grants Officer selects the appropriate **weekly** payment rate.

<b>Interim repayment amount (IRA)</b>	<b>IRA Up to \$1,300</b>	<b>IRA \$1,301 to \$2,860</b>	<b>IRA \$2,862 to \$4,420</b>	<b>IRA \$4,421 to \$5,980</b>	<b>IRA \$5,981 to \$7,540</b>	<b>IRA \$7,541 to \$10,000</b>
Criminal PC1 and 2 except serious fraud	\$5	\$10	\$15	\$20	\$20	\$20
Criminal PC 3 and 4 and serious fraud	\$5	\$10	\$15	\$20	\$25	\$30
Family – except Property	\$5	\$10	\$15	\$15	\$15	\$15
Relationship property	\$5	\$10	\$15	\$20	\$20	\$20
ACC and Employment	\$5	\$10	\$15	\$20	\$20	\$20
All other civil	\$5	\$10	\$15	\$20	\$25	\$30

Step 2. The Grants Officer sets the frequency of instalments.

- The frequency of instalments needs to be set at the same rate at which the aided person receives income.
- If the aided person receives income on a fortnightly basis, the Grants Officer will need to set a fortnightly frequency and a fortnightly amount.
- To set a fortnightly amount, the Grants Officer will need to double the weekly instalment amount from the table above.

Step 3. The Grants Officer selects the payment method.

- Automatic Payment from a bank account – this is the most likely instalment plan method.

Step 4. The Grants Officer selects a start date.

<b>Step</b>	<b>Action</b>
Set up a start date for the first payment of an instalment plan.	Base the start date on the first pay date after 23 working days following the date of the letter notifying that aid is granted.
	The 23 working days includes 3 working days to allow for the letter to be delivered to the applicant.

## **Lump sum payment plan**

To set an interim repayment plan based only on a lump sum payment, the applicant needs only to make one payment. This may be through

- a payment from the bank directly to the Agency's account (payment form created in LA Office)
- a different method selected by the aided person (personal or lawyer cheque, cash).

Step 1. The Grants Officer sets the payment date at 24 working days after notification.

- the payment due date allows 3 days for the initial letter to be delivered by mail to the applicant and 20 days for the applicant to make arrangements; payment is then due the following day.

## If the applicant already has a payment plan for a different grant of aid

### Policy

If a person is receiving more than one grant of aid at the same time, for each grant the Grants Officer will

- establish a prescribed repayment amount at the time the grant is approved
- require the applicant to authorise a charge to cover repayment for each grant if the applicant has property
- make a decision to set an interim repayment or not
- calculate a final repayment for each grant as the matters covered by each grant are finalised

Only one interim repayment plan or repayment plan will be required at a time unless the aided person can afford to pay an additional interim repayment or repayment. Once a plan is completed, an arrangement is made with the debtor to begin payments on any other debt to the Agency.

Step 1. The Grants Officer will decide whether or not to set up a new interim repayment plan.

If...	Then the Grants Officer will...
the final payment date of the existing plan is within the next two months	set up a new interim repayment plan <ul style="list-style-type: none"> <li>▪ set the start day on the next pay date or other appropriate date after the existing plan has finished.</li> <li>▪ create an automatic payment form or lump sum payment form/letter</li> <li>▪ send this with the initial grant letter.</li> </ul>
the final payment date for the existing plan is over two months away.	not set up a new interim repayment plan <ul style="list-style-type: none"> <li>▪ set the interim repayment amount</li> <li>▪ will not set up an interim repayment plan (do not create automatic payment form)</li> <li>▪ will advise the aided person                             <ul style="list-style-type: none"> <li>- about their PRA</li> <li>- about the interim repayment amount</li> <li>- whether a charge needs to be authorised and</li> <li>- that the Agency's Debt Management Group (DMG) will contact them when the existing plan is finished to make arrangement to pay the new debt.</li> </ul> </li> </ul>

## Requests to amend an interim repayment decision

### Introduction

A request to amend any part of the interim repayment decision may relate to:

- the PRA - the assessment of the applicant's annual gross income and/or capital
- the interim repayment amount
- the payment plan.

### Procedure

The Grants Officer will need to determine whether to treat a request to amend a payment plan as a reconsideration or as a request to renegotiate the payment plan.

Step 1. Determine how to treat the request.

If...	then...
<ul style="list-style-type: none"> <li>▪ it is clearly identified as an application for a reconsideration (eg: is received on the Reconsideration form or the letter says the aided person is seeking a reconsideration), <b>or</b></li> <li>▪ it requires a recalculations for the PRA, (including gross annual income, capital, MAPI and/or MAPC),</li> </ul>	<p>the request will be processed as a reconsideration under s29 of the Act.</p> <p>Go to step 2 <i>Determine who actions the request</i>, below.</p>
<p>the aided person says they wish to change the payment plan, including instalment rate or frequency, start date, payment method,</p>	<p>the request will be processed as a renegotiation.</p> <p>Go to step 2 <i>Determine who actions the request</i>, below.</p>

Step 2. Grants Officer determines who actions the request for a change to the interim repayment.


If...	then...
<p>the request involves a decision on:</p> <ul style="list-style-type: none"> <li>▪ the PRA (annual gross income, capital, MAPI, MAPC)</li> <li>▪ the interim repayment amount and is received within the first 23 working days of the grant being approved</li> <li>▪ the payment plan and is received within the first 23 working days of the grant being approved (note the possible exceptions below)</li> </ul>	<p>the reconsideration or renegotiation will be undertaken</p> <p>Go to step 3 <i>Which decision first</i> below.</p>
<p>the request involves a decision on:</p> <ul style="list-style-type: none"> <li>▪ the interim repayment amount or plan and is received any time after the first 23 working days of the grant being approved</li> <li>▪ a write-off or cessation or deferral of</li> </ul>	<p>a Debt Officer will undertake the reconsideration or renegotiation.</p> <p>End of process.</p>

If...	then...
payment received at any time after the grant is approved (note the possible exception for deferral below)	

Step 3. The Grants Officer determines which decision logically needs to be reconsidered first where there is more than one decision to be reconsidered



The reconsideration will be completed as two (or more) processes. However, the reconsideration must appear as one process to the aided person. That is, only one letter communicating the outcome of the reconsideration is sent to the aided person.

For example, complete a reconsideration about ...	before a reconsideration on ...
<ul style="list-style-type: none"> <li>▪ a financial assessment (including PRA-MAPI/MAPC)</li> </ul>	<ul style="list-style-type: none"> <li>▪ a write-off</li> </ul>
<ul style="list-style-type: none"> <li>▪ a write-off</li> </ul>	<ul style="list-style-type: none"> <li>▪ a change to the repayment plan</li> </ul>
<ul style="list-style-type: none"> <li>▪ an interim repayment amount</li> </ul>	<ul style="list-style-type: none"> <li>▪ a change to lump sum payment</li> </ul>
 Ensure that the first decision is completed before the second decision is started	

Step 4. Process a reconsideration request that involves both Grants and DMG.

Step	The Grants Officer will.....
When a reconsideration or renegotiation request is received	Ensure the process is started promptly so that Agency timeliness standards are met.
Confirm your responsibilities and the Debt Officer's responsibilities.	Discuss this with the Debt Officer to clarify responsibilities before a referral is actioned.
Refer the matter to DMG as appropriate.	Any referral from Grants to DMG and vice versa must: <ul style="list-style-type: none"> <li>▪ be completed promptly,</li> <li>▪ under the cover of a Reconsideration Referral memo, and</li> <li>▪ include copies of the relevant documents.</li> </ul>
	Go to step 5 <i>Action payments</i> below



Note that the Debt Officer will follow the same process in terms of referral, decision making and advising the aided person.

Step 5. Action on payment plans while the reconsideration is being undertaken.

- If the aided person has not set up repayment arrangements by the given deadline, they are in default of the conditions on the grant and will receive debt recovery letters from the DMG (eg: a reminder letter or notice of intention to withdraw)

- When a repayment decision is under reconsideration, it is preferable that the aided person not receive debt recovery letters

If...	then...
the reconsideration will be completed before the due date for the first payment	the Grants Officer carrying out the reconsideration <ul style="list-style-type: none"> <li>▪ does not need to take action to suspend debt recovery letters</li> <li>▪ completes the reconsideration within the timeframe</li> <li>▪ changes the payment plan if the original decision is overturned</li> <li>▪ advises the aided person of the decision</li> </ul>
the reconsideration process will not be completed before the due date for the first payment	the Grants Officer carrying out the reconsideration <ul style="list-style-type: none"> <li>▪ needs to suspend debt recovery letters by changing the interim repayment amount to \$0 and taking out the first payment date, in LA Office – refer to the LA Office manual for instruction</li> <li>▪ completes the reconsideration</li> <li>▪ reinstates a changed or the same interim repayment plan, depending on the outcome of the reconsideration</li> <li>▪ advises the aided person of the decision</li> </ul>

Step 6. Action while a LARP review is in progress.

- Where a LARP review is in progress, the same process for managing reconsiderations will apply for preparing the Agency submission to the Panel. See steps *Process reconsiderations* and *Action on payments while reconsidering* above.
- The second decision maker has responsibility for sending the submission to the Panel administrator.

## Request to amend or set up an alternative payment plan



Wherever practical, the Agency aims to set an interim repayment plan that the applicant can afford when aid is first granted.

### Alternative plan sought by the applicant

#### Policy

A legally aided person may seek one of the following options from the Agency:

- deferring the start of the interim repayment from income or disposable capital. The interim repayment can be deferred indefinitely as well as temporarily.

- stopping the interim repayments from income temporarily. The Agency can agree to stop interim repayments temporarily at any time once they have begun.
- a different interim repayment plan.
- a write-off of or partial write-off of the interim repayment, which means that some or all of the interim repayment would not be required. This will not affect the prescribed repayment amount. If the legally aided person is seeking a write-off or partial write off of the interim repayment, the Agency's Write Off Policy must be followed.

The applicant can seek one of the options above when the Agency proposes an interim repayment plan, or at any stage after an interim repayment plan has been established.

If the aided person has asked the Agency to amend the interim repayment plan because they cannot afford the payments, the Agency will set the new interim repayment plan at a rate proposed by the person, unless information provided indicates that a higher rate is reasonable or that a lower rate would be more sustainable.

If the aided person asks the Agency to defer or amend an interim repayment plan based on capital at any stage, the Agency will consider the request on the basis of the principles in its Write Off Policy.

## Alternative plan sought by the Agency



The Agency will adjust the rate of the interim repayment or require the person to start or restart the interim repayment without their agreement only when:

- the Agency has new information about the aided person's finances which justifies the change, and
- all reasonable efforts to reach an agreement have failed. This means that the Agency has contacted or attempted to contact the aided person by phone, email or in writing, to propose the change, outlined reasons for it, and sought the aided person's agreement. This process will demonstrate reasonable efforts.

Before making a decision on changing to the plan without the aided person's agreement, the Agency will:

- write to the aided person to propose the change, giving reasons for the change and offering the opportunity to make submissions
- consider any submissions before making its decision.

## Changing the plan

Grants Officers will only change a payment plan on request from the aided person.

Step 1. Grants Officers will assess the aided person's request to change their repayment plan.



When the aided person asks for the payment plan to be deferred, the Grants Officer will consider:


- the amount of payment that the aided person has suggested that they can make

- the value of the debt and:
  - the length of time it will take for the aided person to fully repay the debt,
  - whether or not this exceeds 5 years when the debt has been based solely on income or more than 7 years where the debt is based on income and capital
- particular costs faced by the aided person that affect their ability to make payments at the suggested rate and whether they are temporary or long term costs
- the likelihood that the aided person will face serious hardship if the Agency does not agree to the proposed payment plan
- if there has been a change in the aided person's financial circumstances since the application form was completed
- the length and reason for a deferral in starting a plan (if this is no longer than a two month deferral and the reasons are accepted, a Grants Officer may approve a deferral. All other requests for deferral must be referred to the Debt Management Group for a decision).

Go to step 2 *Determine whether to change the repayment plan* below.

Step 2. Grants Officers determine whether to change the repayment plan.

If...	Then the Grants officer...
a payment plan nominated by the legally aided person would result in the debt will be repaid in the 5/7 year timeframes,	may agree to the new plan.
the minimum instalment amount is \$5 per week,	may agree to the new plan.
it is more sustainable for the aided person to pay a minimum instalment amount of \$5 per fortnight,	may agree to the new plan.  Note that this may result in the debt being repaid over a period longer than 5 years if it is based on income but this is acceptable in this situation.
the aided person suggests a payment plan for more than \$40 per week,	will not accept the plan <b>unless</b> the aided person's current income has resulted in a PRA higher than \$20,000.
the aided person suggests a payment plan not covered by the above options	will consider referring the request for a change to Debt – go to Step 3 <i>referring to DMG</i>
the aided person demonstrates they have no weekly/fortnightly income left after paying necessary expenses (ie. no actual disposable income even though they have a MAPI)  Note – generally the Grants Officer will	may <ul style="list-style-type: none"> <li>▪ assess the aided person's financial circumstances using the Agency's hardship policy and procedure - refer to part 11 of the Grants Manual - and</li> <li>▪ approve a deferral of the start of interim</li> </ul>

If...	Then the Grants officer...
<p>not need to request proof of weekly expenditure if the aided person is a long term beneficiary.</p> <p>In other situations if they have insufficient information or reasonable doubts about the information provided, the Grants Officer should request that the expenditure sections of form 17 (statement of financial situation) are completed.</p>	<p>repayments for up to 6 months if agree there are special circumstances of hardship, and</p> <ul style="list-style-type: none"> <li>▪ will advise DMG of the reasons for the decision – go to Step 4 Process for actioning a deferral because of special circumstances</li> </ul> <p> Note – this information may have already been provided with the application form. In this case may approve a deferral when setting up the initial interim repayment plan.</p>
<p>if the aided person says they have no income (eg: the aided person is currently in custody)</p>	<p>may</p> <ul style="list-style-type: none"> <li>▪ approve a deferral of the start of the interim repayments of up to 6 months - less than 6 months if income will be reinstated earlier</li> <li>▪ advise DMG of the reasons for the decision – go to Step 4 Process for actioning a deferral because of special circumstances</li> </ul>

### Step 3. Process for referring a request to change a payment plan to DMG

Most requests for a change of plan within the first 23 days will be handled by the Grants Officer. However, they may be unable to set a new payment plan in certain circumstances.

Step	Action
<p>Where the aided person has:</p> <ul style="list-style-type: none"> <li>▪ proposed a plan or an amount outside the guidelines set by the Agency (eg: less than \$5 per fortnight; deferring the start of payments for more than two months) or</li> <li>▪ not provided sufficient and reasonable (acceptable) grounds on why the current payment plan cannot be met or</li> <li>▪ requested a full or partial write-off of the interim repayment, cessation of any payment or deferral in starting payments for more than two months.</li> </ul>	<p>The Grants Officer may refer the matter to the DMG for a decision.</p>

### Step 4. Process for actioning a deferral of the IRP because of special circumstances

If ...	Then the Grants officer will....
<p>A deferral of the interim repayment plan because of special circumstances of</p> <ul style="list-style-type: none"> <li>▪ hardship</li> <li>▪ no current income</li> </ul>	<ul style="list-style-type: none"> <li>▪ amend the interim repayment plan in LA Office by changing the start date to 6 months later from the date of your decision to approve a deferral</li> <li>▪ advise the aided person that their circumstances will be reviewed in 6 months time</li> </ul>

has been approved	<p>(clause codes are available for this purpose)</p> <ul style="list-style-type: none"> <li>▪ prepare and enclose an AP form (lump sum payment form)</li> <li>▪ advise DMG of your decision and reasons for it under cover of a template referral sheet. Attach a copy of the request for a change to the IRP and any supporting documentation.</li> </ul>
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## Monitoring compliance on the interim repayment plan



If there is a default on the interim repayment plan, the Debt Management Group will seek to have payments started or a new plan agreed to. This may include deferral, changed rate or frequency. If this is not successful, DMG will start the process to withdraw aid.

### Civil/Family legal aid

Step	Action
The applicant or legally aided person continues to default on their repayment plan.	DMG will send a Notice of intention to withdraw aid in civil/family cases.
The applicant or legally aided person sends their submission on why aid should not be withdrawn due to a default directly to DMG.	<p>DMG will:</p> <ul style="list-style-type: none"> <li>▪ assess the submission and</li> <li>▪ seek to negotiate an agreed compliance position with the aided person.</li> </ul>
<p>If the applicant or aided person does not send any submission on why aid should not be withdrawn</p> <p><b>or</b></p> <p>if the submission is unsuccessful, DMG will</p> <ul style="list-style-type: none"> <li>▪ not withdraw aid</li> <li>▪ advise that either the aided person has not responded, or they have responded but DMG have not been successful in achieving compliance and the aided person is in default</li> <li>▪ advise the Grants Officer to consider a withdrawal of aid</li> <li>▪ send copies of the relevant papers (including a written record of the Debt Officer's decision on the aided person's submission and reasons why the Debt Office is advising Grants to withdraw aid is being made) to the Legal Aid Office managing the file</li> </ul>	<p>The Grants Officer needs to consider:</p> <ul style="list-style-type: none"> <li>▪ the advice of the Debt Officer (the Grants Officer may wish to discuss this further with the Debt Officer to understand this advice)</li> <li>▪ any factors about the case which might advise against a withdrawal of aid, such as: <ul style="list-style-type: none"> <li>- the interests or welfare of the applicant and/or dependents;</li> <li>- the applicant is currently involved in mediation;</li> <li>- the dispute is close to being resolved or the case finalised).</li> </ul> </li> </ul>

Step	Action
If the Grants officer decides not to withdraw aid.	<p>The Grants Officer must advise DMG immediately by email.</p> <p>DMG will advise aided person by letter that aid will not be withdrawn.</p> <p>DMG will make any decision required to manage the debt/ debt default from that point onward.</p>
If the Grants officer decides to withdraw aid	Go to Part 15 <i>Withdrawal of legal aid</i> in this manual.

### **Criminal legal aid**

If the aided person defaults on conditions on the grant in a criminal case, other debt enforcement strategies are implemented.

## Setting the final repayment

This procedure is used for:

- calculating the repayment value (repayment payable/final repayment) once the matters covered by the grant are finalised or the legal aid file is closed for other reasons
- advising the legally aided person of the final repayment.

## Legislation

The key sections of the Legal Services Act 2000 for determining the final repayment are:

- s15 Conditions on a grant of legal aid
- s18 Amount of repayment payable.

## Policy

In accordance with s 15(2) a repayment will be calculated for every grant of aid, except for those grants which are exempt from a repayment.

When the Grants Officer calculates the amount of repayment payable, they are also calculating the final repayment. This calculation follows the requirements set out in s18.

Any payment from the interim repayment that exceeds the final repayment will be refunded.

If there are no proceeds of proceedings, the final repayment will not exceed the cost of services.

## Procedures

The key steps in the final repayment procedures are:

- Confirm in LA Office that the aided person has a PRA greater than \$0
- Ensure that all the values required to make a calculation are available and recorded
- Calculate the final repayment
- Advise the aided person of the final repayment amount

## Confirm that the aided person will be required to make a final repayment



All grants must be assessed for a final repayment except any grant that is exempt from a final repayment.

However, DVA must be assessed for a final repayment.



Step 1. Confirm whether or not a final repayment will be required.



If...	then
the PRA is greater than \$0,	a final calculation is required.
there are proceeds of proceedings,	a final calculation is required. Go to step 2, <i>Calculate the total cost of services</i>

## Total cost of services



The total cost of services is the total of all amounts approved and paid to the lead provider for the case covering both professional fees and disbursements. No final repayment may exceed the total cost of services.

Step 2. Calculate the total cost of services.

If...	then...
<p>the Grants Officer is satisfied that</p> <ul style="list-style-type: none"> <li>▪ the final invoice for the grant has been received or</li> <li>▪ the case can be finalised for any other reason</li> </ul> <p> Refer to <i>Finalising Case and File</i> in <b>Part 2</b> of this manual</p>	<p>the Grants Officer may calculate the total cost of services.</p> <p> The final repayment calculation should not be revised after the aided person has been advised except in exceptional circumstances – see Step 7 <i>Recalculate the final repayment</i></p>
grant includes an exempted matter,	the costs of services for the exempted matter may not be added to the total from which the final repayment is calculated.
there is a domestic violence matter covered by the grant,	<p>the proportion of each claim for “DVA Applicant” will have been recorded separately in LA Office as claims have been paid.</p> <p>Go to step 3, <i>Proceeds</i>.</p>


## Proceeds of proceedings




Repayment of the cost of services from proceeds of proceedings is a requirement under the Act. This is still the case if the applicant has no PRA.

Step 3. Add the value of proceeds of proceedings

Step	Action
The Grants Officer adds the value of proceeds of proceedings (including costs awarded) to the aided person’s LA Office	The value of the proceeds is assessed the same way as any capital item. See Part 6 <b>Financial</b>

Step	Action
<p>record for the final repayment calculation.</p> <p> This is the only value that will need to be added to the client's record.</p>	<p><b>Assessment</b> in this manual.</p> <p>The provider usually supplies the following information. If this isn't supplied, the Grants Officer may need to seek more information, such as:</p> <ul style="list-style-type: none"> <li>▪ the current market value of property or</li> <li>▪ a valuation report on other assets.</li> </ul> <p>Go to step 4, <i>Prescribed repayment amount</i>.</p>
<p>Confirm the matter to which the proceeds relate if there is more than one matter covered by the same grant</p>	<p>The proceeds may only be used to repay the cost of services for the proceedings that resulted in the settlement proceeds.</p> <p>The proportion of each claim for "Property" should have been recorded separately in LA Office as claims have been paid.</p>

 See Part 8 **Repayment conditions on a grant – general processes and requirement to repay** in this manual for further information about Proceeds of Proceedings.

## Prescribed repayment amount

Step 4. Identify the Prescribed repayment amount

The prescribed repayment amount:

- was calculated when the grant was first approved
- sets the upper limit of a final repayment, except if there are proceeds of proceedings.
- will already be recorded in LA Office.

Go to step 5 Interim Repayment

## Interim repayment

Step 5. Deduct interim repayment

- The total value of any interim repayments received is a deduction in the calculation

## Calculate the final repayment



Calculate the final repayment when the case is to be finalised in LA Office.

After the final repayment has been advised to the aided person, the final repayment is recalculated only in exceptional circumstances. (refer to Step 7)

## Overview of how the final repayment is calculated

Step 6. Calculate the final payment

The calculation of the value of the final repayment (the repayment payable) is set out in s18 of the Act. The calculation starts with either:

- the prescribed repayment amount (PRA) if there are no proceeds of proceeding or
- the proceeds of proceedings

If there are no proceeds of proceedings...	the following calculations apply:
and the cost of services exceeds the PRA,	<ul style="list-style-type: none"> <li>▪ <b>Take</b> the value of prescribed repayment amount</li> <li>▪ <b>Deduct</b> interim repayments paid</li> <li>▪ <b>Equals</b> repayment payable (final repayment amount)</li> </ul>
and the cost of services is less than the PRA,	<ul style="list-style-type: none"> <li>▪ <b>Take</b> the value of cost of services</li> <li>▪ <b>Deduct</b> interim repayments paid</li> <li>▪ <b>Equals</b> repayment payable (final repayment amount)</li> </ul>

If there are proceeds of proceedings...	the following calculations apply:
and they are less than the cost of services,	<ul style="list-style-type: none"> <li>▪ <b>Take</b> the value of the proceeds</li> <li>▪ <b>Add</b> the prescribed repayment amount (PRA)</li> <li>▪ <b>But</b> only up to the cost of services</li> <li>▪ <b>Deduct</b> interim repayments paid</li> <li>▪ <b>Equals</b> repayment payable (the final repayment amount)</li> </ul>
and they equal or exceed the cost of services,	<ul style="list-style-type: none"> <li>▪ <b>Take</b> the value of cost of services</li> <li>▪ <b>Deduct</b> interim repayments paid</li> <li>▪ <b>Equals</b> repayment payable (final repayment amount)</li> </ul>



If the proceeds of proceedings cover only one matter in a grant covering several matters, the calculation needs to take this into account.



Section 18 allows for any deductions under the Act or any regulations. Currently there are no such deductions.

Step 7. Recalculate the final repayment amount after the aided person has been advised of the final repayment

If ...	then the Grants Officer will....
the final repayment amount changes following a reconsideration or review	recalculate the final repayment amount and advise the aided person of the new amount

If ...	then the Grants Officer will....
the value of the final cost of services increases by \$300 or more (e.g.: following receipt of a late invoice from a provider)	recalculate the final repayment amount and advise the aided person of the new amount
the value of the final cost of services increases by less than \$300	not recalculate the final repayment amount
the value of the final cost of services decreases by any value	recalculate the final repayment amount and advise the aided person of the new amount
the value of one of the other amounts used in the final repayment calculation changes (eg: revised interim repayment amount, update on value of proceeds of proceedings)	recalculate the final repayment amount and advise the aided person of the new amount

### Interest payable and the cost of registering a charge

Interest charged on an interim repayment debt and the cost of registering a charge to secure debt, are the costs of debt management rather than costs of legal services.

Therefore, do not add these costs to the final repayment.

The DMG manages these costs separately and they will advise the aided person about them.

### Advise the aided person



The Agency must advise the aided person when a final repayment has been calculated. There are only 2 exceptions:

- there are no cost of services
- the legally aided person has died.

### Payment plan

The payment plan for the final repayment is set by the DMG.

## Reconsideration, review or change of the final repayment



The Grants Officer is responsible for responding to any request for a reconsideration or review submission about the calculation of the value of the final repayment.

### Guidance



**Note** that the recalculation of the final repayment will not include any payments that may have already been made on the final repayment.

The Agency will advise the aided person that the DMG will contact them with an updated Debtor Statement (with credit for any payments made) and new payment plan.

See part 18 **Reconsiderations and LARP** in this manual for the procedure.

### Request after calculation of final repayment

The Agency may receive a request for reconsideration or review of the calculation of the final repayment.



Note that:

- the Grants Officer managing the file, is responsible for organising the reconsideration by a Team Leader or for writing the submission to LARP

#### Step 1. Action request for reconsideration/review

If ...	then ...
the client had an interim repayment and was paying this,	the money will continue to be receipted against the client's debt.

#### Step 2. Action on completion of reconsideration/review

If ...	Then the Grants officer will...
the previous PRA or Final Repayment is changed by the reconsideration/review decision,	calculate a new replacement Final Repayment.

### Errors in original advice to aided person



In this situation, the debt still needs to be calculated as a final repayment amount. This is because the Act requires that the debt must be created if there are financial grounds to support this.

Once the debt has been created, it should be written off under the just and equitable provision of s 37(1)(c).

## Final repayment plan

### Policy

The final repayment plan is set and managed by the DMG.

In confirming the repayment payable, the DMG will confirm a repayment plan that:

- has the objective of completing the repayment to the Agency within five years (for repayment based on income) or seven years (for repayment based on income and capital), and
- is sustainable given the aided person's financial circumstances.

In doing this, the Debt Officer will:

- confirm the continuance of the existing interim repayment plan or, if asked to, amend the plan to ensure it is sustainable for the aided person
- seek repayment based on capital that is not part of an existing interim repayment plan, as soon as this capital is sold or is available (see below)
- consider any submissions about the writing off of the repayment payable under its Write Off Policy
- obtain registration of a charge for the amount of the repayment payable over property, if the aided person has already authorised a charge (see below)
- register a charge in the personal property security register over other property of the aided person
- as appropriate, withdraw a registered caveat
- register or maintain a security over the debt
- seek payment of proceeds of proceedings if these are available for repayment (see below)
- seek registration of a charge over proceeds of proceedings if the proceeds consists of property that is not available for immediate repayment.

Where an aided person refuses to repay a debt that the Agency considers payable, the DMG may take any action open to it, to recover the debt

### Payment Plan

When the repayment payable (final repayment) is set the Debt Officer will:

- review the existing interim payment plan, where one exists, to see if it meets the principles of repaying the applicants debt to the Agency within five years (for repayment based on income) or seven years (for repayment based on income and capital)
- consider whether it is sustainable given the aided person's financial circumstances
- nominate a payment plan if there is no current payment plan in place for the debtor (as either an interim repayment or a repayment)

The payment arrangement is likely to be sustainable when:

- the aided person has been meeting this level of payment as an interim repayment

- the most recent financial information available suggests that the aided person's gross income is the same or higher than their income when aid was first granted.

A plan that is considered sustainable will be confirmed as the repayment plan, with any adjustment to the end date advised to the debtor.

If the Debt Officer considers that the current plan is too high for the legally aided person to sustain, the debt officer will contact the debtor and suggest that they can reduce the amount of their payments.

If the legally aided person has regularly defaulted on the current arrangement and to maintain the plan would result in the debt being paid in less than 5 years from the date aid was first granted, the Debt Officer may consider proposing a lower payment plan as an option to the legally aided person.

When the current plan results in the debt being repaid in a longer time period than 5 or 7 years, or the latest information that the Agency has on the legally aided person's financial means suggests that they could sustain a higher payment amount, the Debt Officer will contact the legally aided person with the intention of negotiating an amended plan.