



Legal Services Regulations 2000

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 18th day of December 2000

Present:

His Excellency the Governor-General in Council

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

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Regulations

- 1 Title**
 These regulations are the Legal Services Regulations 2000.

2 Commencement

These regulations come into force on 1 February 2001.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Legal Services Act 2000

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

Eligibility for legal aid

4 Legal aid for civil matters: maximum disposable income and capital

- (1) The amount of disposable income for the purpose of section 9(1)(b) of the Act is \$2,000 per year.
- (2) The amount of disposable capital for the purpose of section 9(2)(a) of the Act is \$2,000.

5 Determining disposable income

For the purpose of determining an applicant's disposable income in accordance with clause 2(1) of Schedule 1 of the Act, the following allowances apply:

- (a) the personal allowance is,—
 - (i) in the case of an applicant with a dependent child or dependent relative who is not the applicant's spouse, \$10,361;
 - (ii) in any other case, \$9,841;
- (b) the allowance where the resources of any other person are treated as the applicant's resources is \$4,827;
- (c) the allowance for a dependent child or dependent relative who is not the applicant's spouse (in this paragraph, a **dependant**) is,—
 - (i) in the case of a married applicant, \$1,872 for the first or only dependant;
 - (ii) in the case of an unmarried applicant, \$4,619 for the first or only dependant;
 - (iii) in every case, \$832 for every additional dependant.

6 Determining disposable capital

- (1) The allowance under clause 3(1)(f) of Schedule 1 of the Act is \$500.
- (2) For the purpose of valuing an applicant's assets in accordance with clause 3 of Schedule 1 of the Act,—
 - (a) the value of the assets is their fair market value at the time of the application for legal aid; and
 - (b) the value of any interest in a reversion or remainder (whether legal or equitable) in any property, or in a trust or other fund (whether the applicant's interest is held solely, jointly, or in common, and whether it is vested or contingent) must be computed in a manner that is both fair and reasonable.
- (3) If the applicant, or a person whose resources are to be treated as the applicant's resources, is under a contingent liability under an enactment or instrument to pay a sum, then, when determining the disposable capital of the applicant, an allowance must be made of any amount that is reasonably likely to become payable within 6 months of the application for legal aid.
- (4) If the applicant, or a person whose resources are to be treated as the applicant's resources, stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Agency may, instead of ascertaining the value of the person's shares in the company, treat the person as if he or she were the sole owner or partner and compute the amount of his or her capital in respect of that asset accordingly.

Contributions

7 Amount of contribution payable

- (1) The amount of contribution payable by every applicant is \$50.
- (2) An applicant for legal aid in respect of a civil matter is also liable to pay, as part of his or her contribution, the total of the following:
 - (a) \$1 for each complete \$2 of the first \$1,000 of the applicant's disposable income;
 - (b) \$2 for each complete \$3 of the applicant's disposable income that is more than \$1,000 but less than \$2,000:

- (c) all of the applicant's disposable income that is more than \$2,000:
- (d) \$2 for each complete \$3 of the applicant's disposable capital that is less than \$2,000:
- (e) all of the applicant's disposable capital that is more than \$2,000.

Charges

8 Fees and expenses associated with charges

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

Applications in respect of minors and others

9 Applications by minors

- An application for legal aid in respect of a civil matter for a person aged under 16 must be made by—
- (a) either of the person's parents; or
 - (b) his or her guardian; or
 - (c) a person who has custody of the person.

10 Applications by people incapable of completing application because of mental or physical infirmity

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

11 Applications by non-residents

- (1) An application for legal aid by a person who is not resident in New Zealand (a **non-resident**) may be made by the applicant's lawyer or other person authorised by the applicant.
- (2) Despite subclause (1), the statement of financial means required by section 12(b) of the Act to be included in the application must be completed by the non-resident personally (unless regulation 9 or regulation 10 applies).
- (3) A person signing an application on behalf of a non-resident must state in the application that the applicant has not signed it personally because he or she is not in New Zealand.

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

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

These regulations, which come into force on 1 February 2001, are made under the Legal Services Act 2000 and replace the Legal Services Regulations 1991. They carry over the substance of the provisions of the Legal Services Regulations 1991 that are applicable under the Legal Services Act 2000. The provisions prescribe—

- the levels of disposable income and disposable capital for the purpose of determining eligibility for legal aid for civil matters:
- the allowances applicable when determining a person's disposable income:
- the allowance and conditions applying when determining a person's disposable capital:
- the contribution payable by legally aided persons towards the cost of services:
- who may make applications on behalf of minors and others with special needs in relation to applying for legal aid.

The 1 substantive change in these regulations is that, whereas under the 1991 regulations the contribution payable in respect of criminal

legal aid is at the discretion of the court Registrar who grants it, under these regulations a contribution of \$50 is prescribed. This is necessary because the Act requires that the regulations prescribe the amount of contribution or method of calculating it. The regulations cannot delegate the power to determine the amount of the contribution.

Issued under the authority of the Acts and Regulations Publication Act 1989.

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These regulations are administered in the Ministry of Justice.
