

Family and civil legal aid application form

Submissions and final decisions

November 2017



Legal Aid Services

New Zealand Government

Foreword

Thank you to everyone who engaged with the review on the combined family and civil legal aid application form, either through the Ministry of Justice website or via submissions to the New Zealand Law Society.

Your contributions have helped us to depart from requiring multiple forms for family, civil or mental health legal aid and combine these into one.

Overall, your feedback told me that if we can find ways to modernise what we do and make it easier to engage with us, you will support that. As the Legal Services Commissioner, I am committed to making this entirely understandable vision a reality while ensuring that I collect the right information so that people eligible for legal aid receive it.

Your feedback has also helped me to make some operational changes - some that will affect you as providers and others that will be managed inside Legal Aid Services. These changes are positive and mean that we will continue to become steadily more efficient and effective at what we do.

This document gives a summary of your feedback and helps to give context around why we have made the changes. I am confident that you will be pleased with the combined family and civil legal aid application form and the smoothing of the interaction that comes with that. There will be more to come in the future.

Thank you for your ongoing commitment to our customers.

Bryre Patchell
Legal Services Commissioner

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Introduction

Family and civil legal aid covers a wide range of disputes that may go to court such as getting orders for parenting arrangements through to resolving employment or ACC disputes.

At present, if an application is made for family or civil legal aid, there can be situations where up to three forms must be completed. Each of these forms ask for some of the same information. This is time consuming for you, a burden on our customers and is an unnecessary expense for taxpayers. Simplifying and streamlining our forms is a start on the journey to ensuring our customers have continued access to legal services in an efficient and effective way.

This document sets out how we undertook the review and summarises the key feedback that helped inform the new family and civil legal aid application form. We realise that the new form is very different to our other forms and we will shortly start reviewing all of our other forms to ensure that they are designed in a way that gets the best results for our customers, providers and us.

Process

A small project team was set up and a select group of Legal Aid Services experts reviewed the form and developed questions that would allow the Commissioner to make accurate assessments about eligibility pursuant to the Legal Services Act 2011 (the Act) and the Legal Services Regulations 2011 (the Regulations). The review also forced the group to question whether the Commissioner was collecting information that was not needed for the purposes of assessing eligibility and whether the layout of the form could be changed to make it easier for you and our customers to complete.

In September, the Commissioner decided to ask for your feedback on the new proposed application form via the consultation pages “Have Your Say” on the Ministry website. At the same time, the New Zealand Law Society took part in the review and surveyed their members, so that their submission was fully informed by their member views.

This document sets out your feedback, our responses and final decisions. It addresses your particular concerns about how we ask for information about income and assets, information about partners and other matters.

Should you have any further questions, contact information is available at the end of this document.

Summary of decisions

Your comments

We received a wide range of feedback from you in response to the consultation on the proposed family and civil application form.

In particular that the form could be further improved by:

- clarifying the definition of a financial dependent
- specifically asking if there is any interest in a home or land, before requiring the details about the home or land to be filled out
- ensuring space is provided to record whether any assets or debts are in dispute
- amending the wording of the 'justification of legal aid' section.

We also received positive comments, in particular:

- most of you agreed that the proposed form is much better
- removing the need to write in children's names will save time
- it is a good idea to shorten the length and amalgamate forms where possible.

Our responses

In response to your feedback and following a review of our operational processes, we have:

- continued to combine family, civil, mental health, statement of financial position and the trust form into one application form
- combined questions about customer and partner's finances
- incorporated a definition of a financial dependent into the question
- further improved some of the questions to ensure they are in plain English where possible – making answering the questions easier for everyone
- changed how we ask for your view and comment on why aid should be granted in the 'justification of legal aid' section to ensure that the question meets what is required to assess eligibility for family, civil and mental health proceedings.

The look and feel of the form has also changed to ensure alignment with Ministry standards.

The changes should reduce the need for us to go back to you for clarification or more information, while still reducing the amount of time required to fill out the form and effort collating documentation or proof.

Key feedback from you, and our responses

The table below provides key feedback regarding improvements that we have received and provides our responses and final decisions. They are ordered by sections in the new form.

Your comments	Our responses
<i>Living arrangements</i>	
The question regarding a partner is too open and could get a 'yes' answer when they do not live together	We agreed. The question has been changed to "Do you have a partner that lives with you?" This allows household income to be assessed as required by the Act.
The definition of a financially dependent child is needed, is there an age limit? Also, the names of the children can be helpful when considering an application.	We have split this question into two parts. "How many children do you have under 18 years old?" and "How many of those are living with you?" Splitting this section into two parts allows the relevant information to be captured for determining financial eligibility for legal aid as well as calculating Working for Families tax credits. We assess eligibility based on the <i>total</i> number of financial dependents, and the Working for Families tax credits based on the number <i>living</i> with you.
<i>Income</i>	
The income section is no longer requesting the applicant's income information from the last 12 months or any details of any circumstances that will lead to prospective income in the future 12 months.	Correct. Schedule 1(2) of the Act allows any other period of 12 months to be used when assessing income for an application. In the frequency of income section, this will allow the applicant to complete what their income will be for the year. We will now assess current income for people on a benefit and wage/salary earners at the point of applying for aid If any other relevant income information should be considered, (e.g. a job starting

Your comments

Our responses

soon), this can be explained in the “Other financial information” section.

Applicants for legal aid who are in prison do not have a household income and usually have no funds to pay for legal fees.

We agreed. Schedule 1(4)(1) of the Act, states that the resources of a partner are not included when the person is living apart from their partner.

Can the form be shortened for applicants in prison?

An explanatory note has been added under the income section to advise “if in prison, your partner’s income and assets are excluded when we are assessing your income”. Our decision to only require current income information has also simplified the application for people in prison.

The address details and ‘how are you financially supported?’ are also appropriate areas to indicate that the applicant is in prison.

Assets and debts

The section around property needs to be clarified to require a yes or no answer. The questions about property following this need to be in the same format as the rest of the form.

We agreed, this feedback has been incorporated.

We have also applied this feedback to the questions about investments, resalable items and debts.

The questions about assets and debts need to include a space to record if they are in dispute.

We agreed. This is important to know when we are assessing financial eligibility. Where assets or debts are in dispute schedule 1(3)(f) of the Act requires only the applicant’s proportion of their value to be included when determining eligibility and conditions.

All of the questions in this section now have a column to indicate if the item is in dispute.

The question around debts should allow space for:

We agreed, an additional line has been added for WINZ debts and ‘vehicle loan’ has been added next to ‘hire purchase’.

Your comments

Our responses

- WINZ debts
- car loans

Other financial information

The section and question under 'special financial circumstances' doesn't sound quite right. The wording needs to be amended to clarify what is required.

We agreed. Section 10(2) of the Act states that an application must be refused where financial eligibility thresholds are exceeded, unless there are special financial circumstances.

This question has been amended to ask the applicant "Are there any *other* reasons why you can't pay for your own lawyer?". This will provide any additional information not already covered by the income and debts section.

The "Other party" information should in the first instance be completed by the applicant. There is not enough space to record if there is more than one party and their relationship.

Information about the other party in the dispute and the name of their lawyer is not required when assessing eligibility for legal aid. We have made the decision to remove this section from the form.

If there are particularly pertinent details that would be required for eligibility purposes, this can be covered in the question 'Tell us why legal aid should be granted'.

Lawyer's details

There is no space to record a provider number, this would remove the need to answer all the other provider details.

We agreed. We have added a question for your provider number to be included. We have retained the question for a provider name, in cases where the provider number is unknown or recorded incorrectly.

However, the remaining questions about title and law firm have been removed as we already hold this information in our system.

Your comments

Our responses

The question “Do you think it will succeed” is not relevant in all cases and asks the lawyer to be the Judge.

This question has been amended to “Tell us why aid should be granted”. It allows a summary of the key points of an application and asks you to summarise how it is eligible under the Act rather than providing large amounts of documentation.

A short description or key bullet points about the case will assist grants officers in assessing eligibility.

Other areas for consideration

There should be a section for full budget and outgoings.

The Regulations do not require information on weekly outgoings to determine eligibility.

If the applicant has some special financial circumstances (e.g. a child with exceptional medical expenses) this can be outlined in the question “Are there any other reasons why you can’t pay for your own lawyer?” This will ensure it is considered as part of the assessment.

If there is a legal aid debt obligation, the debt team will reassess the applicant’s financial situation after the grant is closed, if required.

The form should be in a format that could be easily used by providers who do not use Microsoft Word.

We agree. An editable PDF is now available for this form. Over time we will be adding more editable PDFs to the range of forms that are available.

Implementation dates

The new form must be used for all family, civil and mental health applications for legal aid from **13 November 2017**. We will accept applications that have been signed by your clients prior to 13 November but are received on or post 13 November 2017. However, any applications that have been signed by your client's on or post 13 November must be on the new form otherwise they will be rejected.

The new form will be distributed to you from the week starting 6 November 2017. If you do not receive a pack, printed versions of the form are still available for order through Baseline Management.

The installer package for Microsoft Word has been updated to remove the old forms from the installer pack. The new form will *not* be added to the installer pack.

There is also an editable PDF now available which will ensure that Mac users have a digital option available.

Supplementary information

A copy of the final form is included for your reference below.

The grants handbook and the prescribed manner for applications has been updated. A copy of the handbook is available here: justice.govt.nz/grants-handbook/

All legal aid forms and information on the different ways that you can get legal aid forms can be found here: justice.govt.nz/legal-aid-lawyers/forms/

For more information about recent updates about legal aid, the "What's new for legal aid lawyers" page is updated frequently: justice.govt.nz/whats-new/

The Legal Services Act 2011, and the Legal Services Regulations 2011 govern decisions about legal aid. The important sections to note when you are filling out the form are:

- **section 7** — eligible proceedings for civil legal aid
- **section 10** — what a grants officer considers to determine eligibility
- **section 14** — the timeframe for submitting an application for legal aid
- **schedule 1** — definitions of income and disposable capital and when the resources of a partner should be included.
- **Regulations 5 and 6** — the income and disposable capital thresholds.

Questions

If you have any questions about the changes outlined in this document, you can contact the National Service Delivery Operations Support team.

By email: nsdopssupport@justice.govt.nz

Or the Legal Services Commissioner

In writing:

Legal Services Commissioner

DX: SX10125

Wellington

