

# Departmental Disclosure Statement

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Legal Services Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice

The Ministry of Justice certifies that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

3 November 2022

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## **Part One: General Policy Statement**

The Legal Services Amendment Bill implements the Government's decision to strengthen legal aid, improving access to legal assistance for low income New Zealanders. It has been identified that there are cost barriers for accessing legal assistance. These barriers are the user charge that is payable by most civil and family legal aid applicants as well as the interest that is charged on unpaid legal aid debt.

The Bill removes these barriers by repealing the provisions that prescribe setting a user charge and charging of interest on unpaid legal aid debt. There are other amendments to the Bill that remove references to the user charge and interest, consequential to the principal amendments.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<i>Yes, the Regulatory Impact Statement 'Improving access to legal assistance for low income New Zealanders' prepared by the Ministry of Justice (10 June 2022). This is published at <a href="https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments">https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments</a></i>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<i>The Regulatory Impact Statement did not meet the threshold for a Treasury RIA team assessment.</i> <i>A Quality Assurance Panel from the Ministry of Justice has reviewed the Regulatory Impact Assessment prepared by the Ministry of Justice and considered the information and analysis partially meets quality assurance criteria. The panel noted that:</i> <i>As noted in the analysis, evidence of problems with legal aid are well documented and confirmed by a range of stakeholders. The analysis is constrained by the existing legal assistance framework and the funding available to improve the system. The Government's preferred approach is unlikely to fully address the problems identified by stakeholders but will significantly alleviate the current pressures on the legal aid system. The proposed new reporting measures will help inform the next review of legal aid policy settings scheduled for 2024.</i>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<i>Yes, this can be viewed in the Regulatory Impact Statement published at <a href="https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments">https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments</a> at pages 26-27</i>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

The Bill improves access to justice and is therefore consistent with New Zealand's international obligations.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

The Ministry of Justice did not identify any inconsistency with the principles of the Treaty of Waitangi during the development of the Bill and its policy. Changes promoted through this Bill are intended to make legal assistance more accessible for low income New Zealanders by removing some of the cost barriers. Ministry of Justice data indicates that legal aid grants are highest in regions where there is a higher Māori population.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

Crown Law has assessed the Bill for compliance with the New Zealand Bill of Rights Act 1990. Any advice provided to the Attorney-General by Crown Law, or a section 7 report of the Attorney-General, will be accessible at

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

NO

**(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?**

NO

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

N/A

### Privacy issues

**3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?**

NO

**3.5.1. Was the Privacy Commissioner consulted about these provisions?**

NO

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>The policy given effect to in this Bill was initially identified in the review of legal aid in 2018. As part of that review, there were targeted consultations with the legal profession, in particular, the Public Defence Service, New Zealand Law Society, Criminal Bar Association, and Community Law Centres o Aotearoa.</p> <p>Officials had initial conversations with a representative of Te Hunga Rōia Māori o Aotearoa, the Māori Law Society; some members of this group then provided feedback either as individuals, via several South and North Island forums that the Ministry of Justice held with legal aid lawyers, or via Community Law Centre feedback. Officials also met with the Regional Māori Warden co-ordinators.</p> <p>Officials sought further feedback from the legal profession in 2021. Feedback was received from representatives of the legal profession including the NZLS, the Bar Association, the Auckland District Law Society and the South Auckland Bar Association.</p> <p>The Chief Justice and Heads of Bench were also consulted.</p> <p>Stakeholder feedback was supportive of the proposals to increase eligibility and reduce debt in order to improve access to justice for those on low incomes.</p> <p>Due to budget confidentiality we were not able to consult specifically on the content of the policy proposals to address the recommendations of the review in 2018.</p> <p>The following agencies were consulted in developing the Cabinet paper for these changes: Crown Law Office; Department of Corrections; Inland Revenue Department, Ministry of Business, Innovation and Employment – ACC, Government Centre for Dispute Resolution, and the Refugee Status Branch; Ministry of Education; Ministry of Social Development – Office for Disability Issues and Oranga Tamariki; Ministry for Pacific Peoples; Ministry for Women; New Zealand Police; Te Puni Kōkiri; and the Treasury.</p> <p>The DPMC have been informed.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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