Legal Assistance (Sustainability) Amendment Bill 2011 (2012 No 316-2)

Date of Introduction: 11 August 2011
Portfolio: Justice
Select Committee: Justice and Electoral
Date report presented: 14 December 2012
Published: 16 April 2013
by John McSorley BA LL.B, Barrister Legislative Analyst
P: (04) 817-9626 (Ext. 9626)

Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.

Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

This Bill amends the Legal Services Act 2011 and other Acts to limit the number of legal aid grants and increase the amount legally aided people must pay. The Bill also limits eligibility for legal aid, reintroduces a user charge for civil and family legal aid, and enables interest to be charged on legal aid debts. Part 1 of the Bill amends the Legal Services Act 2001 and Part 2 of the Bill amends other Acts that allow a court-appointed lawyer to represent children.

The Bill as introduced is described in Bills Digest No 1917.

Supplementary Order Paper No 134

On 27 February 2012, the Minister of Justice wrote to the Select Committee requesting that it defer further consideration of this Bill until the Family Court Review had reported to Cabinet in May 2012, to allow legal aid reforms to be consistent with any resulting decisions about the Family Court. On 10 October 2012, the Minister of Justice referred Supplementary Order Paper 134 to the Committee, with a request that it consider the proposed amendments alongside the bill.

The Select Committee has stated: “The supplementary order paper addressed many matters raised in submissions, with proposals including retaining the existing appointment frameworks for lawyers for the child and youth advocates, removing the proposal to use Orders in Council to change proceedings for which civil legal aid is available, removing the tighter financial means test for less serious criminal cases, and removing household goods from the calculation of eligibility for legal aid. The Minister also indicated changes to be introduced in regulations, including reducing the proposed user charge for
family and civil cases from $100 to $50, and charging interest 6 months after a legal aid debt is finalised rather than immediately. The supplementary order paper also introduced several new provisions, including the ability to refuse to grant civil or family legal aid and the ability automatically to deduct repayments from wages and benefits if the applicant is in arrears for repayments on previous legal aid debt”

Refocusing
The Select Committee has "proposed amendments [reflect] reflect the refocusing of the bill on the outcomes for legal aid clients, rather than solely on the financial savings to be achieved”

Main changes

Title of Bill
The bar-2 Bill changes the name of the Bill from Legal Assistance (Sustainability) Amendment Bill to the Legal Assistance Amendment Bill (amending Clause 1).

Means test for criminal matters modified
The Bill as introduced provided for a tighter financial means test for offences punishable by a prison sentence of 3 years or less.

The bar-2 Bill retains the status quo (deleting Clause 6, New Sections 8 and 8A of the Legal Services Act 2011).

Schedule of proceedings eligible for civil legal aid
The bar-2 Bill removes the provisions placing eligible civil proceedings in a schedule to the Legal Services Act, which could be amended through Order in Council (i.e. a Henry VIII clause) (deleting Clause 6, New Sections 7, 8 and 8A; deleting Clause 9, New Section 13A of the Legal Services Act 2011).

Additional eligibility criteria for civil legal aid
The bar-2 Bill allows the Commissioner to refuse civil legal aid if the applicant is in arrears for repayments on previous legal aid grants “unless the interests of justice require otherwise” (Part 1, Clause 7, amending Section 10 of the Legal Services Act 2011).

User charge for family and civil legal aid
The bar-2 Bill makes drafting changes to described proceedings exempted from the user charge are identified. The charge does not apply to:

- A grant of aid on a specified application; or
- An application for legal aid by a person of a class specified in regulations; or
- An application for legal aid in respect of a proceeding of a class specified in regulations.

1 Legal Assistance (Sustainability) Amendment Bill, 2012 No 316-2, As reported from the Justice and Electoral Committee, Commentary, p. 2.
2 Ibid., pp. 2 and 3.
Specified applications are described in a new definition, that of “specified applications”. Application under the Protection of Personal and Property Rights Act 1988 are added to that list (Part 1, Clause 10, substituting subclause (4); amending Clause 4 by inserting a definition of “specified application”).

Definition of “disposable capital”

The bar-2 Bill removes the requirement to consider household furniture and other low-value assets when assessing disposable capital (Part 1, deleting Clause 20 (which amended Schedule 1 of the Legal Services Act 2011)).

Lawyer for the child and youth-advocate services

The bar-2 Bill retains the existing approval frameworks for court-appointed lawyers representing children or young people, or acting as youth advocates (Part 2, Subparts 1-6, Clauses 24-52).

Copyright: © NZ Parliamentary Library, 2013

This work is licensed under the Creative Commons Attribution 3.0 New Zealand licence. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to the Parliamentary Library and abide by the other licence terms. To view a copy of this licence, visit: http://creativecommons.org/licenses/by/3.0/nz/.