



LEGAL AID TRIBUNAL

PRACTICE NOTE

9 November 2022

Contents

INTRODUCTION.....	3
THE TRIBUNAL AND ITS POWERS.....	3
Jurisdiction.....	3
Grounds for Review	4
APPLICATIONS FOR REVIEW.....	5
Applications.....	5
Late applications	6
Representation.....	7
Provision of information.....	8
Withdrawal of an application	9
CONDUCTING THE REVIEW	9
Reviews on the papers.....	9
Additional information.....	9
DECISIONS	9
Reasoned decisions.....	9
Publication of decisions.....	10
Appeals.....	10

INTRODUCTION

This Practice Note is issued pursuant to section 65(2)(b) of the Legal Services Act 2011 (the Act). It is effective for all review applications.

The following information on the practice and procedure adopted by the Legal Aid Tribunal (the Tribunal) is designed to provide guidance to applicants and their representatives. The Tribunal expects compliance with the procedures set out.

The practice and procedure of the Tribunal is subject to the Act and Legal Services Regulations 2011 (Regulations) and any other Regulations made under the Act.

THE TRIBUNAL AND ITS POWERS

Jurisdiction

1. The Tribunal is an independent, specialist judicial body established under section 62 of the Act.
2. The functions of the Tribunal, set out in section 63 of the Act, include the determination of applications for review of decisions made by the Legal Services Commissioner (the Commissioner). The decisions within the Tribunal's jurisdiction include:
 - 2.1. decisions affecting an aided person, or an applicant for aid, - *section 52(2)* (below);
 - 2.2. decisions about the payment of costs awarded to the successful opponent of an aided person – *sections 46(2) and 52(3)*;
 - 2.3. decisions of the Commissioner about a lead providers late claim for payment - *sections 51(1A) and 99(5)*;
 - 2.4. the failure or refusal on the part of the Commissioner to make or to reconsider a decision – *section 52(4)*; and
 - 2.5. any other decisions it has jurisdiction to review - *section 63(b)*.

3. Section 52(2) of the Act:

52 Grounds for review

(2) The decisions that may be reviewed are decisions that affect the applicant for review, and relate to any 1 or more of the following:

(a) an application for legal aid:

(b) any conditions imposed under section 18 or 47 on a grant of legal aid:

(c) any amount payable by an aided person, whether as an interim repayment or a repayment, under a grant of legal aid:

(d) the maximum grant under a grant of legal aid:

(da) any decision to depart from, or to refuse to depart from, fees prescribed by regulations under section 114(1)(cc):

(e) the withdrawal of, or amendment to, a grant of legal aid:

(f) the enforcement of any condition imposed under section 18 or 47 on a grant of legal aid:

(g) any changes to, or dealings with, a change on property arising out of a grant of legal aid:

(h) an application under section 46.

Grounds for Review

4. An application for review may be brought on the grounds that the decision of the Commissioner is manifestly unreasonable and/or wrong in law. *Sections 52(1), (3) and (3A)*
5. Review is focused on whether the Commissioner has acted within the powers and process established by the Act. The Tribunal's role is to consider whether the Commissioner's decision was reasonable and lawful. The Tribunal cannot assess whether the decision was substantively correct.
6. A decision is manifestly unreasonable where it is shown "*clearly and unmistakably, that the decision made ... went beyond what was reasonable or was irrational or logically flawed*".¹
7. A decision may be wrong in law "*if it derives from an incorrect application or interpretation of the statute; or if it is wrong in principle; or if the decision-maker has*

¹ *Legal Services Agency v Fainu* (2002) 17 PRNZ 433 at [28].

*failed to take into account some relevant matter; or has taken account of an irrelevant matter; or if it depends upon findings which are unsupported by the evidence”.*²

8. A finding that a decision is ‘manifestly unreasonable’ requires “*not only that the decision be found to be unreasonable, but that [the Tribunal] forms the view that the decision is so clearly unreasonable that the intervention of the [Tribunal] is called for*”.³
9. The threshold for intervention by the Tribunal is a high one.⁴
10. The Tribunal may confirm, modify, or reverse the decision under review, or direct the Commissioner to reconsider part, or all, of the decision. *Sections 56(1) and 57(1)*

APPLICATIONS FOR REVIEW

Applications

11. Applications for review can be made by:
 - 11.1. an aided person;
 - 11.2. an applicant whose application for aid has been declined;
 - 11.3. the successful opponent of an aided person to whom costs have been awarded; or
 - 11.4. a lead provider whose claim for payment has been refused.
12. Applications must be made within 20 working days after the date on which notice of the Commissioner’s decision is given to the applicant. *Section 53(1)*
13. Applications must be made using the approved application form which is available from the Tribunal and downloadable from www.justice.govt.nz/tribunals/lat.⁶ It may be completed electronically and emailed to the Tribunal, or filed by post or in person

² *Legal Services Agency v Fainu* (2002) 17 PRNZ 433 at [27], approved by the Court of Appeal in *JMM v Legal Services Agency* (2003) 17 PRNZ 443, at [103] and [111].

³ *Legal Services Agency v A* (2003) 17 PRNZ 443 at [11] (c)

⁴ *Legal Services Agency v W* HC Wellington CIV 2009-485-2191, 21 April 2010 at [17], [58].

⁵ <https://www.justice.govt.nz/assets/Documents/Forms/LAT-form-1-application-for-review.pdf>

⁶ <https://www.justice.govt.nz/assets/Documents/Forms/LAT-form-1-application-for-review.pdf>

at the office of the Tribunal in Wellington:

Legal Aid Tribunal
Tribunals Unit
Level 1
86 Customhouse Quay
WELLINGTON

Legal Aid Tribunal
Tribunals Unit
DX SX 11159
WELLINGTON

Email: tribunals@justice.govt.nz

Fax: 04 462 6686

14. Applicants must provide a current postal address in New Zealand or email address.

This is the address where communications about the application will be sent, unless the applicant has a representative who provides an address and agrees to accept communications for the applicant. The Tribunal must be kept informed of any change of address for communications. The Tribunal will rely on the most recent address for communications provided to it.

15. A notice of application should be accompanied by copies of the following:

15.1. the Commissioner's original decision;

15.2. the Commissioner's reconsideration (if any);

15.3. relevant correspondence, or other documents supporting the application.

Late applications

16. An applicant may apply to the Chair of the Tribunal to extend the time for filing an application, if exceptional circumstances prevented the application from being made within 20 working day. *Section 53(2)*

17. The words '*Exceptional circumstances*' require that "*those circumstances must be well outside the normal ... The circumstances do not have to be unique or very rare but they do have to be truly an exception rather than the rule*".⁷

18. The factors to be considered are:

⁷ *Ye v Minister of Immigration* [2009] NZSC 76, [2010] 1 NZLR 104 at [34]

- 18.1. the length of the delay;
 - 18.2. the reasons for the delay;
 - 18.3. the merits of the substantive application, and
 - 18.4. whether the Commissioner is prejudiced by the delay.⁸
19. An application to extend time must be made within 60 working days of the date when notice of the decision being reviewed was given. *Section 53(2)*
20. An applicant seeking an extension of time must complete Part 3 of the application form, describing the exceptional circumstances, the period of delay, the reasons for the delay, the merits of their substantive application for legal aid, and the consequences to them if the late application is not accepted.
21. If the request for reconsideration of the Commissioner's original decision was itself late, the reasons for that late application must be disclosed to the Tribunal. *Section 53(3)*

Representation

22. An applicant may represent themselves, or be represented by a lawyer, or other person.
23. An application for review for a person aged under 16 must be made either by that person's parents, that person's guardian, or a person providing day-to-day care to or who is in custody of that person. *Clause 16, Regulations*
24. A minor aged 16 or over may apply for review in their own right.
25. An application for review for a person who is mentally disordered must be made by a person aged 20 or over who is of full capacity. *Section 15(2)*
26. In applications for review of legal aid for civil proceedings which the rules of court require to be brought, or defended, by a next friend or guardian *ad litem*, the application for review must be made by the person's next friend or guardian *ad litem* or a person intending to act in that capacity. *Section 15(3)*

⁸ *AM (Historic Abuse) v Legal Services Agency* [2011] NZLAT 36, [2012] NZAR 95 at [7]

27. The Chair of the Tribunal may waive the requirements of sections 15(2) and (3) of the Act on receipt of reasons why waiver is just or appropriate in the circumstances.

Section 15(5)

28. An application for review for a person who, due to mental or physical infirmity, is incapable of completing an application may be made by any responsible person (including an officer of the Public Trust) with sufficient knowledge of the applicant's affairs. *Clause 17, Regulations*

29. An application by a person who is not resident in New Zealand may be made by the applicant's lawyer or another person authorised by the applicant. A person signing on behalf of a non-resident applicant must state in the application that the applicant has not signed it personally because he or she is not in New Zealand. *Clause 18, Regulations*

Provision of information

30. The applicant is responsible for establishing their case and ensuring that all evidence and submissions are provided to the Tribunal before it makes its decision.

31. It is not necessary to provide copies of the Tribunal's own decisions, or reported or well-established New Zealand Court decisions, which are relied on. However, copies of foreign court decisions or New Zealand decisions on novel points of law must be provided.

32. The Tribunal only requires copies of documents. If inspection of an original document is required, the Tribunal will advise the parties in writing.

33. The Act and the interests of natural justice require that the Tribunal provide copies of the application for review, any submissions, and all supporting materials to the Commissioner. *Section 54(c)*

34. The Commissioner will file submissions and all relevant documents held by the Commissioner within 14 days or such other period as the Tribunal allows. *Sections 54(a), and 55(2)(a)*

35. A copy of the submissions and documents provided to the Tribunal by the Commissioner will be sent to the applicant, who may respond within 7 days or such

other period as the Tribunal allows.

Withdrawal of an application

36. An applicant can withdraw an application at any time before a decision has been issued by completing the withdrawal form⁹ and filing it with the Tribunal.

CONDUCTING THE REVIEW

Reviews on the papers

37. The Chair assigns each application to a Tribunal Member who will conduct the review and issue a decision. Tribunal Members are independent Judicial Officers. To protect that independence, parties should not contact Members. Any material to be put before a Member must be filed with the Tribunal and will be shared with the other party to the application.
38. The Tribunal conducts reviews on the papers. This means that written submissions and documentary evidence are considered. The Tribunal does not hold in person hearings. Reviews are conducted with all reasonable speed. *Section 55(4)*

Additional information

39. To assist with decision making, the Tribunal may seek and receive, from any person, any submission, document or information relating to the review. *Sections 54(a), 55(2)(a) and (3)*
40. The Tribunal may require the Commissioner to provide a report setting out the reasons and factors the Commissioner considered when making the original decision and when reconsidering it. *Section 55(2)(b)*

DECISIONS

Reasoned decisions

41. The Tribunal's decisions are given in writing and must include a brief summary of the reasons. *Section 56(2)*

⁹ <https://www.justice.govt.nz/assets/Documents/Forms/LAT-form-2-withdrawal-of-application.pdf>

42. Decisions will be delivered electronically, or by post, directly to the applicant or through their representative (if any) and to the Commissioner.
43. Instead of issuing a decision, the Tribunal may also direct the Commissioner to reconsider all, or any part of the decision under review. The direction must give reasons and may set out the matters to be reconsidered - [section 57](#).
44. Decisions are final, and, unless appealed on a point of law, cannot be changed even by the Member who issued the decision.

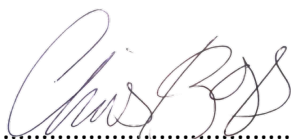
Publication of decisions

45. The Tribunal will normally publish its decisions on the Tribunal's website, unless the Chair determines that either the decision or part of it should be suppressed, either on application by any party, or at the chair's own volition. Published decisions are anonymized - [section 58](#).

Appeals

46. If an applicant or the Commissioner considers that a decision of the Tribunal is wrong in law, they may appeal to the High Court. Any appeal must be lodged within 20 working days after the Tribunal's decision is given. The High Court may extend the timeframe for appeal on special leave – [High Court Rule 20.4](#).

DATED this 9th day of November 2022



C D Boys Chair
Legal Aid Tribunal