

September 2015

Legal Aid News is your official regular communication from Legal Aid Services on all matters related to legal aid. *Legal Aid News* is generally published in the last week of every month.

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Text Messaging

From 2 November 2015, text messages will be sent to criminal providers seeking confirmation of availability for rotational assignments with a same day appearance. Grant officers will still however attempt to contact you by phone call in the first instance.

We are aware that since a change was made in the Ministry of Justice's phone system at the end of last year, the usual caller identification service is no longer available. We are working to change this but in the meantime text messaging will be of particular benefit to you when we attempt to make contact regarding availability for urgent criminal cases.

These text messages will include the court and PAL information. The assignment will be made if confirmation is received within 10 minutes of the message being sent.

The sender will appear as a four digit number and the message will be from LAS. If you would like the sender to display differently after receiving a text, the four digit number can be saved in your phone contacts under a name of your choice.

The use of text messaging may be expanded in the future.

Waitangi Disbursements Policy

We recently updated the [Waitangi disbursements policy](#). There are no policy changes but we needed to clarify that travel expenses are payable for non-local travel only.

Care of Children Act (CoCA) guidelines

You may be interested to know that we have created a table to show you how CoCA matters are managed against the fee schedules. The table can be found in the [Granting Decisions manual](#), p23. The table presents various CoCA scenarios and states:

- when we need proof that a Judge has directed legal representation
- when legal aid may become available or an amendment to grant is needed and
- what fees will be paid.

If you have any questions, please contact your legal aid office.

Marteley v The Legal Services Commissioner – Supreme Court decision

The Supreme Court judgement was delivered on 21 August 2015. The Supreme Court unanimously allowed the appeal from the Court of Appeal and set aside its judgement.

A majority of the Supreme Court held that when considering an application for criminal appellate aid, the Commissioner is required to take into account the merits of the appeal and may decline a grant of aid if the appeal is entirely lacking in merit. But the Commissioner’s assessment of merit is only one of the seven mandatory criteria to be considered under section 8(2)(a) of the Legal Services Act 2011, and the Commissioner may, on the basis of those other criteria, conclude that aid should be granted even if the appeal lacks merit. The existence of merit in an appeal is not a prerequisite to a grant of criminal legal aid.

The process of applying for a grant of criminal appellate aid will not change, and in particular interim grants will continue to be available in eligible Court of Appeal cases - to enable lawyers to submit a “summary of issues” in support of the application for aid.

However, the nature of the information required with an application for criminal appellate aid has been expanded. Historically, lawyers have limited the information provided with an application to the merits of the grounds of appeal. It will now be important to ensure that an application includes sufficient information on any of the other mandatory criteria, under section 8(2)(a) of the Act, that are relevant to the application.

Among those “other criteria,” the Supreme Court made clear (as did the Court of Appeal before it) that particular care should be taken to consider whether the applicant is unable to present his or her own appeal. We would suggest that any tangible difficulty for the applicant is addressed clearly, and with supporting information where available, in any application for criminal appellate aid.

Queries?

If you have queries about any article in this newsletter, please contact legallaidnews@justice.govt.nz.