

# Legal Aid Performance Review Committee

## Terms of Reference

### Introduction

The Performance Review Committee (“the Committee”) is a statutory committee appointed by the Secretary for Justice (“the Secretary”) under section 79 of the Legal Services Act 2011 (“the Act”).

The Committee is part of the quality assurance framework and performance management system for those providing publicly funded legal services under the Act.

### Definitions and interpretation

In these Terms of Reference, unless the context otherwise requires, expressions such as “legal services”, “specified legal services”, “provider”, and “regulations” have the meanings given to them in the Act.

### Function of the Committee

The function of the Committee is to assess and advise the Secretary of any matter referred to the Committee by the Secretary relating to the performance of a provider.

The Secretary may make a referral to the Committee if

- the Secretary reasonably believes that a provider of legal aid services or specified legal services has failed to comply with any condition of his or her approval, or any provision of the Act or the regulations; and
- the Secretary considers that the person’s failure, if proven, would justify cancellation or modification of the person’s approval.

### Membership of the Committee

Members of the Committee, including its chairperson, are appointed by the Secretary.

The Chairperson will have at least 7 years’ legal experience.

The Committee will consist of members who, collectively:

- have expertise in the areas of law in which the provider is providing legal aid services or specified legal services; and
- understand the needs and interests of courts, aided persons, and the legal profession; and
- have expertise in financial management in the State sector.

The Secretary will appoint a pool of experts from different areas of law: Criminal, Family, Civil, Waitangi Tribunal, Maori Land Court, Maori Appellate Court, Mental Health, Refugee and

Immigration, Court of Appeal and Supreme Court. This will enable the Secretary to appoint suitable members for each performance review.

#### **Term of office and reappointment**

A member of the Committee holds office for a term specified by the Secretary in that member's letter of appointment, and may be reappointed.

#### **Vacation of Office**

A member of the Committee may at any time be removed from office by the Secretary for incapacity affecting performance of duty, neglect of duty, or misconduct proved to the satisfaction of the Secretary.

A member may at any time resign by written notice to the Secretary.

A member ceases to hold office if he or she is adjudged bankrupt under the Insolvency Act 2006.

If a member is an employee of the Ministry, his or her membership ceases when he or she ceases to be an employee of the Ministry.

#### **Remuneration of members who are not Ministry employees**

Committee members who are not Ministry employees will be entitled to claim \$400 per day or \$200 per half-day for committee meetings.

The chairperson of the Committee will be entitled to claim \$600 per day or \$300 per half-day for committee meetings.

#### **Independence of the Committee**

The Committee must perform its functions independently of the Secretary. The Secretary cannot direct the Committee in relation to its functions.

#### **Immunity of members**

Civil proceedings may not be brought against members of the Committee in respect of things done and decisions made in good faith.

#### **Procedure of the Committee**

The Committee must conduct its procedures in the manner set out in Part 3 of the Legal Services (Quality Assurance) Regulations 2011, as amended from time to time. For the Committee's convenience, a current version of Part 3 of those regulations is attached to these Terms of Reference as 'Appendix A'.

#### **Administrative support**

Ministry staff will provide administrative support to the Committee to organise, minute and follow up on committee meetings.

# Appendix A

## Part 3 of Legal Services (Quality Assurance Regulations) 2011

### Performance review committee

#### 1) Recommendation of performance review committee

- a) If the performance review committee is not unanimous, the recommendation supported by a majority of the votes cast at a meeting of the performance review committee is the recommendation of that committee.
- b) The performance review committee must give its recommendation to the Secretary in writing and provide reasons.

#### 2) Confidentiality

- a) The performance review committee must keep confidential all information provided or disclosed to it under the Act or these regulations except to the extent that disclosure is—
- b) required to enable the committee to carry out its obligations and duties under the Act or these regulations; or
- c) otherwise compelled by a law other than the Act or these regulations.

#### 3) Chairperson

- a) The functions of the chairperson are to—
- b) make such arrangements as are practicable to ensure the orderly and expeditious discharge of the function of the performance review committee; and
- c) ensure to the extent practicable, that the meetings of the committee—
- d) consist of members who, collectively, meet the requirements of section 79(6) of the Act; and
- e) have sufficient members to constitute a quorum.

#### 4) Meetings of performance review committee

- a) The chairperson must decide the dates, times, and method of the meetings of the performance review committee.
- b) The meetings of the performance review committee may be held—

- c) by its members being assembled together at the time and place appointed for the meeting;  
or
- d) by means of audio visual, or electronic communication.

#### **5) Acting chairperson**

- a) For the purpose of ensuring that the functions and powers of the chairperson are performed or exercised during any period when the chairperson is absent, incapacitated, or has a conflict of interest, the chairperson must ensure that at all times he or she has nominated a member of the performance review committee to serve as acting chairperson if the need arises.
- b) The fact that a person purports to perform or exercise, or to have performed or exercised, any function or power of the chairperson under a delegation or nomination is, in the absence of proof to the contrary, sufficient evidence of the person's authority to do so.

#### **6) Quorum**

- a) The quorum of the performance review committee is 3 members.
- b) Conflicts of interest
- c) If a member of the performance review committee has a conflict of interest in relation to any matter before the committee,—
- d) the member must declare the conflict to the chairperson as soon as the member becomes aware of it; and
- e) the member must step aside from any involvement in the matter if the chairperson considers the conflict of interest is likely to materially affect the member's impartiality.
- f) If the chairperson of the performance review committee has a conflict of interest in relation to any matter before the committee, the chairperson must—
- g) declare the conflict to the Secretary; and
- h) step aside from any involvement in the matter if the Secretary considers that the conflict is likely to materially affect the chairperson's impartiality.