

Legal aid lawyer induction guide

Information about legal aid for service providers

Legal Aid Services

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New Zealand Government

Contents

Welcome	4
How legal aid works.....	4
Types of legal aid.....	5
Legislative background and decision-makers.....	7
Quality assurance framework	7
Contract and practice standards	8
Applying to be a legal aid provider	8
Checks and audits	8
Complaints and performance reviews	8
National Specialist Advisers.....	9
Expectations and professional obligations of legal aid lawyers	9
Contact details	11
Your local legal aid office	11
Applications.....	16
Eligibility	16
Completing an application form.....	16
The decision	17
Reapply, reconsider/reassess and review.....	17
Lawyer assignments.....	19
Cases requiring a Criminal PAL 1 or 2 lawyer.....	19
Cases requiring a Criminal PAL 3 or 4 lawyer.....	20

Public Defence Service assignments	21
Delegation of work and appointment of other counsel	22
Appointment of second counsel	23
Legal aid fees	24
Criminal fees	24
Family fees	24
Civil fees	25
Amendment to grant and 'fixed fee plus'	25
Interim grants	25
Invoicing	26
Legal aid debt	27
Need more information?	28

Welcome

Welcome to legal aid. We're glad you've joined us.

We hope this guide provides some useful information for navigating legal aid processes and procedures. We're always happy to help, so if you have a question you can't find an answer to, please call your local legal aid office or send them an email.

Also check out the grants handbook which sets out in detail our policies relating to legal aid.

Our terminology

In this handbook, we use terms that are common across legal aid services but which may be unfamiliar to you.

A provider is a person who is approved by the Secretary for Justice to provide legal aid services or specified legal services. A provider is generally a lawyer with a contract to provide legal aid or specified legal services.

A lead provider is a person who has been assigned a legal aid case. The lead provider is responsible for all work undertaken on a case assigned to them.

A legally aided person is a person who has applied for, and who has been granted, legal aid.

How legal aid works

The government is committed to ensuring those that need legal assistance can get it. It provides funding – or 'legal aid' – for people who can't afford a lawyer and who are eligible to receive legal aid.

Your client may have to pay a user charge and repay their legal aid grant. There's also a statutory charge for any asset, money or costs your client is entitled to as a result of the case.

Background

Dame Margaret Bazley's 2009 report 'Transforming the Legal Aid System' identified a number of areas in which New Zealand needed to improve its approach to legal aid. Since then, there has been a substantial programme of legal aid reform which has involved a new Legal Services Act, the expansion of the Public Defence Service (PDS), the implementation of new approaches to payment of fixed fees, and changes to quality assurance regulations for legal aid lawyers.

The Legal Services Act 2011 (the Act) promotes access to justice for all New Zealanders. It does this by establishing a system that provides legal services to people who qualify for a grant of legal aid, and delivers these services in the most efficient and effective way. The Act also introduced the Legal Services Regulations 2011 which set out specific eligibility criteria for legal aid, and the Legal Services (Quality Assurance) Regulations 2011 for legal aid lawyers.

Information for clients

You can use our brochures to help your clients understand how legal aid works and their legal aid rights and obligations. Download these from our website:

- Your guide to legal aid
- Legal aid for criminal offences
- Duty lawyers helping you at court for free
- Legal aid for civil and family disputes
- Legal aid for protection orders.

Types of legal aid

Criminal legal aid

Criminal legal aid is split into 4 approval levels (Criminal PAL 1-4) depending on the seriousness of the charge.

Criminal legal aid may be available for a person:

- charged with an offence that could result in them being sent to prison for 6 months or more
- appealing their conviction or sentence.

Criminal legal aid is less likely to be available for minor charges unless there are special circumstances such as difficulties with language, reading or writing, mental illness, or the interests of justice suggest that legal aid should be granted.

Family legal aid

Family legal aid may be available for family disputes or issues that could go to court such as:

- disputes over relationship property, child support or maintenance, or the guardianship and care of children
- applying for or defending protection orders
- matters relating to the care and protection of children and young persons
- adoption
- paternity

- mental health (compulsory treatment orders)
- protection of personal and property rights.

Legal aid isn't available for problems that wouldn't go to court (such as drawing up a will) or for divorce proceedings.

Civil legal aid

Civil legal aid may be available for disputes or problems that could go to court or a tribunal (other than the Disputes Tribunal) such as:

- proceedings to recover debt
- breaches of contract
- defamation
- bankruptcy.

Civil legal aid may also be available for proceedings before tribunals or specialist courts such as the:

- Employment Relations Authority
- Employment Court
- Environment Court
- Human Rights Tribunal
- Legal Aid Tribunal
- Māori Land Court and Māori Appellate Court
- Refugee Status Appeal Authority
- Social Security Appeal Authority
- Taxation Review Tribunal
- Tenancy Tribunal
- Waitangi Tribunal.

Specific legal services

Under the Act, we also manage the Police Detention Legal Assistance (PDLA) and Duty Lawyer schemes and the Family Legal Advice Service. The services are provided by approved legal aid lawyers.

PDLA

Under this scheme, a person within New Zealand can talk to a lawyer for free if they've been arrested, held (detained) without being arrested or are being questioned about an offence.

Duty lawyer

A duty lawyer is a lawyer on duty at the criminal courts. They provide free legal help to people who have been charged with an offence and who don't have their own lawyer. Duty lawyers may also assist people to complete the criminal legal aid application form.

Family Legal Advice Service

This service helps people understand the legal aspects of settling a dispute about caring for their children. It can also help people fill out Family Court forms.

Legislative background and decision-makers

The Legal Services Act 2011

The Act came into force on 1 July 2011 and disestablished the Legal Services Agency. It established the Secretary for Justice's responsibilities for legal aid. It also established the independent role of the Legal Services Commissioner in relation to granting legal aid.

Legal Services Commissioner

The functions of the Commissioner as set out in section 71 of the Act are to:

- grant legal aid in accordance with the Act and the regulations
- determine legal aid repayments
- assign a provider of legal aid services or specified legal services
- decide the allocation of cases, oversee the conduct of legal proceedings and manage their performance in relation to salaried lawyers.

Grants officers and debt officers make decisions based on delegations from the Commissioner. The Commissioner is independent from the Government and the Secretary for Justice when making decisions about grants.

Secretary for Justice

The Secretary for Justice retains responsibility for establishing, maintaining and purchasing high-quality legal services under section 68 of the Act. The Secretary manages the quality assurance system and makes decisions about approving a lawyer to provide legal aid services, conducts audits of legal aid providers, and manages complaints.

Quality assurance framework

Legal aid clients can expect to receive a high standard of service from their lawyer. The Act provides for a quality assurance framework for legal aid to ensure:

- the service provided to legal aid clients is consistent across the entire country

- all clients receive an acceptable standard of service
- everyone can have confidence in the quality of services provided by legal aid lawyers
- all legal aid lawyers meet required standards of experience and competence and have the systems in place to meet their clients' needs.

Contract and practice standards

All legal aid lawyers must comply with their contract and the practice standards. The legal aid Practice Standards set out the minimum standards of service and conduct required of legal aid lawyers.

Applying to be a legal aid provider

Lawyers can only provide legal aid services if they have approval from the Secretary for Justice and have a valid contract for services. To get approval, they must meet a range of criteria covering qualifications, experience and competence, and business systems. They also need to demonstrate their competence and experience by providing case examples, work samples and references.

Find out more about the requirements as set out in the [Act](#), and the [quality assurance regulations](#). Go to the Ministry of Justice's website for application forms.

Checks and audits

Under section 91 of the Act, we undertake an annual audit programme for legal aid lawyers every year. This includes audits of private legal aid and PDS lawyers. The audits ensure legal aid lawyers provide the required standards of quality and value when representing legal aid clients and are an important way of ensuring the public has confidence in legal aid services. The audits are also useful for identifying areas for improvement.

Complaints and performance reviews

Clients and others can make a complaint about legal aid lawyers. All complaints received must be assessed by our dedicated complaints investigator. The investigation of complaints may result in a range of outcomes including referral to our audit programme, to the New Zealand Law Society or to the Performance Review Committee.

Performance review committee

The Act established a Performance Review Committee, comprising members nominated by the New Zealand Law Society. Where the Secretary for Justice is considering the

cancellation or amendment of a lawyer's legal aid approval, the matter is first referred to the committee.

National Specialist Advisers

National Specialist Advisers (often referred to as NSAs) are a small group of experienced litigation lawyers who provide specialist advice to legal aid staff on decision-making, and complex and high-profile legal aid cases. They also provide the Legal Services Commissioner with legal and policy advice, and perform other functions in regard to legal aid.

NSAs may provide guidance to legal aid staff on aspects of eligibility for legal aid, the amount of aid to be granted, conditions of a grant, debt (including write-offs and charges) and the withdrawal of aid. NSAs also conduct examinations of claims or parts of claims on behalf of the Commissioner if:

- a legally aided person has requested an examination
- the claims, or parts of claims, appear excessive
- the Commissioner receives information suggesting that legal services that have been claimed for haven't been provided.

Expectations and professional obligations of legal aid lawyers

Legal aid lawyers have all the usual expectations of lawyers such as preparation, quality of work, attendance in court, as well as accurate and timely billing. They must also meet their professional obligations under the Act and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the rules of conduct and client care for lawyers).

Lawyers need to balance the needs and demands of a client with their statutory and contractual responsibility to legal aid. In particular, legal aid lawyers must remember to:

- notify other parties and the Registrar of the relevant court if a client is legally aided in a civil proceeding (section 24 of the Act)
- keep the Legal Services Commissioner informed on the client's financial state and contact details (section 25 of the Act)
- protect the Legal Services Commissioner's interests in relation to charges and proceeds of proceedings (section 107 of the Act).

Specific practice standards relating to legal aid also form part of the contract for service. While similar to the rules of conduct and client care for lawyers, the practice standards set out specific requirements for legal aid lawyers' responsibilities to clients, relationships with clients, conduct of legal aid cases, and their dealings with others such as judges, experts, and court and Ministry of Justice staff. In summary, these require lawyers to:

- understand legal aid entitlements and processes

- recognise cross-cultural issues and issues facing disadvantaged people
- only take on work they have the experience, skills and capacity for
- exercise independent professional judgement on a client's behalf
- communicate clearly and appropriately with clients
- keep a proper record of the instructions they get and the advice they give
- have adequate backup in case of illness or unavailability
- adequately supervise and review the work of lawyers acting under their supervision.

Contact details

Email your queries, applications and invoices to your local legal aid office. They'll respond via email as well. If you send an email, please don't send a hard copy as well. Save those trees!

If you have a general question about legal aid, phone 0800 2 LEGAL AID (0800 253 425) or email a regional legal aid office.

If you have a more specific question about a particular grant of aid, contact the grants officer who is managing the case or your regional legal aid office.

If you have a question about legal aid debts or securities, phone the Debt Management Group on 0800 600 090, option 1.

Your local legal aid office

There are 8 regional offices which process applications for legal aid grants. They're supported by 2 specialist teams who manage aspects of legal aid debt for clients and the approvals and contracts process for legal aid lawyers.

The best way to get in touch with an office is to send them an email. This way, they can more quickly respond to your query.

Auckland (Takapuna)

The Auckland regional office:

- manages applications related to criminal and family proceedings from Auckland central and North Shore courts
- manages criminal cases from the Northland region including Whangārei, Kaitaia, Kaikohe and Dargaville courts
- specialises in refugee and protected persons cases
- specialises in high-cost criminal cases from Auckland, Manukau, Waitākere, Waikato and Bay of Plenty.

Contact us

Email: auckland.legalaid@justice.govt.nz

Phone: 09 488 5440

Postal address (email is preferable):

Auckland Regional Legal Aid Office

DX: BX10660

North Shore City

Waitākere

The Waitākere regional office manages applications related to criminal and family proceedings from the Waitākere court.

Contact us

Email: waitakere.legalaid@justice.govt.nz

Phone: 09 837 9860

Postal address (email is preferable):

Waitākere Regional Legal Aid Office

DX: CX10351

Glendene

Manukau

The Manukau regional office:

- manages applications related to criminal and family proceedings from Manukau, Pukekohe and Papakura courts
- manages family cases from the Northland region including Whangārei, Kaitaia, Kaikohe and Dargaville courts.

Contact us

Email: manukau.legalaid@justice.govt.nz

Phone: 09 262 7750

Postal address (email is preferable):

Manukau Regional Legal Aid Office

DX: EX10980

Manukau

Rotorua

The Rotorua regional office:

- manages applications related to criminal and family proceedings from all courts in the Bay of Plenty (Rotorua, Taupō, Tokoroa, Tauranga, Whakatane, Ōpōtiki and Waihi)
- manages criminal cases from the Huntly, Morrinsville, Thames, Te Awamutu and Te Kūiti courts
- specialises in civil grants of aid, including ACC and employment proceedings.

Contact us

Email: rotorua.legalaid@justice.govt.nz

Phone: 07 350 1090

Postal address (email is preferable):

Rotorua Regional Legal Aid Office

DX: JX10551
Rotorua

New Plymouth

The New Plymouth regional office:

- manages applications related to criminal and family proceedings from all courts in the Taranaki and Manawatū/Whanganui regions including Taumarunui, New Plymouth, Hawera, Whanganui, Marton, Taihape, Ōhākune, Palmerston North and Levin
- manages criminal cases from the Hamilton court.

Contact us

Email: newplymouth.legalaid@justice.govt.nz

Phone: 06 759 0451

Postal address (email is preferable):

New Plymouth Regional Legal Aid Office

DX: NX10010

New Plymouth

Napier

The Napier regional office:

- manages applications related to criminal and family proceedings from all courts in the Hawke's Bay, the East Coast including Ruatōria, Gisborne and Wairoa, and Wairarapa
- manages family cases from the Hamilton, Te Awamutu, Huntly, Te Kūiti, Morrinsville and Thames courts.

Contact us

Email: napier.legalaid@justice.govt.nz

Phone: 06 833 7750

Postal address (email is preferable):

Napier Regional Legal Aid Office

DX: MX10021

Napier

Wellington

The Wellington regional office:

- manages applications related to criminal and family proceedings from the Wellington, Hutt Valley and Porirua courts
- manages applications relating to criminal proceedings from all courts in the Otago and Southland regions
- manages high-cost criminal cases originating from the Napier, New Plymouth, Wellington and Christchurch legal aid offices

It also specialises in the following applications from all regions of New Zealand:

- complex family cases
- parole proceedings
- Waitangi Tribunal proceedings
- applications to the Court of Appeal and Supreme Court
- children worker's exemption appeals
- Public Protection Orders
- Victims' Orders against Violent Offenders
- historic abuse applications
- Family Protection Act cases
- Law Reform (Testamentary Promises) Act cases.

Contact us

Email: wellington.legalaid@justice.govt.nz

Phone: 04 472 9040

Postal address (email is preferable):

Wellington Regional Legal Aid Office

DX: SX10146

Wellington

Christchurch

The Christchurch regional office:

- manages applications related to criminal and family proceedings from all courts in the South Island except for criminal proceedings from Otago and Southland courts which are managed in Wellington.

Contact us

Email: christchurch.legalaid@justice.govt.nz

Phone: 03 339 4730

Postal address (email is preferable):

Christchurch Regional Legal Aid Office

DX: WX11123

Christchurch

Our specialist teams

Provider services

Provider Services assists lawyers with legal aid approvals and contracts, investigates complaints, and carries out audits on quality and value.

If you have a question about your contract for services, your approvals to carry out legal aid or your availability to accept legal aid assignments.

Email: legalaidprovider@justice.govt.nz.

Debt management group

The Debt Management Group administers and collects all legal aid debts, and assists with queries about repayment obligations, securities for legal aid debts, and write-off applications.

Email: legalaiddebt@justice.govt.nz

Phone: 0800 600 090 option 1

Postal address (email is preferable)

DX: WX11295

Wellington

Applications

Eligibility

To be eligible for legal aid, and depending on the legal aid type and the circumstances of the case, your client must meet the threshold and eligibility standards under the [Act](#). Your client doesn't have to be a New Zealand citizen or live here permanently, however the proceeding must be held in New Zealand; see the [regulations](#) for more information.

For criminal legal aid, the factors considered are:

- type of proceeding
- statutory sentence or interest of justice
- whether your client has sufficient means to pay for their legal costs.

For civil and family legal aid, the factors considered are:

- type of applicant and proceeding
- financial thresholds
- whether there's sufficient merit in taking or defending the proceeding.

Investigating allegations of ineligibility

Allegations of ineligibility for legal aid, or information received that raises doubts about a person's eligibility, are investigated by the managing grants officer.

Completing an application form

Clients must apply using the relevant legal aid application form. Application forms are specific to the type of law or proceeding.

To avoid delays in processing your client's application, it's important they answer all questions the best they can and provide the necessary documents. Before sending the application to your local legal aid office, must make sure it:

- is fully completed including all financial details
- includes any supporting information
- is filed before the matter has been finally disposed of by a Court or tribunal.


Incomplete applications

If an application is incomplete or missing essential information, the grants officer will write to you and your client to request the information. If the application isn't signed, it will be

deemed not to be filed in the prescribed manner and will be returned to you or the client for signature.

The decision

A grants officer will assess your client's application for legal aid and issue a decision. If you're nominated as preferred counsel, the officer will advise you by email, and your client by letter, of their decision. Their letter will look a bit like this:

 on behalf of the Legal Services Commissioner									
29 December 2019									
Mr Peter A Lawyer P.A. Lawyer – Barrister PO Box 366 Rotorua 3040	For enquiries: Grant Officer Tel: 07 343 1234 Email: grant.officer@justice.govt.nz								
<table border="1"><tr><td>Legal aid number</td><td>14585426</td></tr><tr><td>Client name</td><td>Mr John Smith 22 Justice Road Ngongotaha Rotorua 3015</td></tr><tr><td></td><td>DOB: 10/10/1980</td></tr><tr><td>Matters</td><td>Male Assaults Female</td></tr></table>	Legal aid number	14585426	Client name	Mr John Smith 22 Justice Road Ngongotaha Rotorua 3015		DOB: 10/10/1980	Matters	Male Assaults Female	
Legal aid number	14585426								
Client name	Mr John Smith 22 Justice Road Ngongotaha Rotorua 3015								
	DOB: 10/10/1980								
Matters	Male Assaults Female								
Dear Mr Lawyer									
About your client's legal aid									
Your client's application for legal aid has been granted for the following charge(s): Male Assaults Female CRN(s): 1244566678									
You have been assigned as lead provider.									
Your client's name and contact details are noted above.									
The court hearing date was supplied on your client's application form.									
The last known court date was 29/12/2019 at Rotorua District Court.									
Maximum grant									
We expect that all matters for this case will be completed under the criminal fixed fee rates.									
Please refer to the 'Maximum Grant' column on the attached Grant Schedule for the services that are applicable for this case. If you wish to seek additional funding, you must submit a request for an amendment in the prescribed manner under the fixed fees policy. A final invoice must be submitted within six months of the court disposal date. However an interim fixed fee invoice may be submitted for consideration.									
<small>Rotorua Office Lane 4, Zens Centre, 1105 Arapa Street, Rotorua 3040. CIVIL0281, Tel: 07 350 1000 or Fax: 07 350 1000. Email: rotorua@lsgr@justice.govt.nz www.justice.govt.nz</small>									

Further information on proceedings steps, criminal fixed fee policy and rates, amendments and invoicing can be found at www.justice.govt.nz	
Conditions on your client's grant	
Your client's prescribed repayment amount is \$0. They will not be required to make an interim or final repayment.	
Change in your client's circumstances	
Please inform us about any changes in your client's circumstances, such as:	
<ul style="list-style-type: none">• changing address• your client's assets increase in value• becoming employed or changing employment• your client's financial situation gets better or worse.	
We told your client that if they wish to discuss this further, they may talk to you or to Grant Officer on 07 343 1234 or by email grant.officer@justice.govt.nz .	
Yours sincerely,	
<i>Grant Officer</i>	
Grant Officer	
Reconsideration rights	
If your client is aggrieved by the decision made they may apply for a reconsideration of the decision using the reconsideration form on our website www.justice.govt.nz or by calling Mārcelle Ois on 07 343 1461 who will send a form to you, to complete with your client.	
If your invoice has been declined for being submitted outside of the statutory time frame, you may apply for a reconsideration of that decision.	
An application for reconsideration must be lodged within twenty (20) working days from the date of notice of this decision. If a reconsideration is not sought, this decision is final. This decision stands pending the outcome of any reconsideration.	
<small>Rotorua Office Lane 4, Zens Centre, 1105 Arapa Street, Rotorua 3040. CIVIL0281, Tel: 07 350 1000 or Fax: 07 350 1000. Email: rotorua@lsgr@justice.govt.nz www.justice.govt.nz</small>	

The letter will let you know your client's contact details, their next court date (if applicable), the name of the managing grants officer, the maximum grant, and any grant conditions such as charges and interim repayments.

If there are any debt obligations, they will be explained here, and you should take the time to discuss them with your client.

Reapply, reconsider/reassess and review

Reapply

If the grants officer doesn't accept your application, you can reapply if your client's circumstances change. For example, if their income falls or the Police charge them with a more serious offence.

Reconsideration/reassessment

If you or your client disagrees with a decision of a grants or debt officer, you can apply for it to be reassessed on the basis of new information, or reconsidered under section 51 of the Act. You must apply within 20 working days of the date on the letter from the grants or debt officer.

You can challenge a decision:

- to reject the application for legal aid
- about the amount of legal aid granted
- about how much of the legal aid your client must repay.

Fill in the reconsideration/reassessment form and email it to the relevant legal aid office. Reconsideration decisions won't be made by the same person who made the original decision.

Legal Aid Tribunal

If your decision has been reconsidered and you or your client is still unhappy with it, you may be able to apply to the Legal Aid Tribunal and ask it to review the decision.

Decisions which may be reviewed include:

- applications for legal aid, including declining an application
- the maximum level of legal aid granted
- the amount to be repaid by someone granted legal aid
- the conditions placed on a grant
- stopping or changing a grant
- a charge, or security, placed on property owned by someone granted legal aid
- enforcement of any condition on a grant
- payment of costs awarded to an opponent in a civil case.

The Tribunal decides whether the decision was manifestly unreasonable and/or wrong in law.

Lawyer assignments

The Commissioner is responsible for the assignment of all legal aid cases to lawyers. Cases are assigned to individual lead providers rather than to a law firm.

Don't forget to keep in touch with us about your availability so we can help clients find an appropriate lawyer for their issue. It's helpful to advise your legal aid office of any times you'll be unavailable.

Civil and family legal aid assignments

In civil and family legal aid cases, the client will nominate a preferred lawyer. To be assigned the case, the lawyer must be:

- approved in the appropriate category
- have a contract to provide legal aid services
- willing and available to undertake the assignment from the outset
- based in the location where the proceedings will be held
- able to appear at court as needed.

Legal aid also facilitates the selection of lawyers for hearings allocated by the Refugee Status Branch of the New Zealand Immigration Service. Assignment is off a rotation list; however, a preferred lawyer may also be assigned if they're on the list.

Cases requiring a Criminal PAL 1 or 2 lawyer

For criminal cases requiring a Criminal PAL 1 or PAL 2 lawyer, the client can't nominate a preferred lawyer. Assignments are made by rotation from a list of approved and available lawyers. The rotational assignment model ('RAM') ensures that, for each year, cases are assigned fairly and evenly to available lawyers within a court cluster.

Some things to consider are:

- if you want to be considered for cases, you must be on the relevant assignment list for that court
- you can only be on one cluster of regional courts at a time but you can choose the cluster and the specific court or combination of courts from which to receive assignments
- each lawyer on a list will receive the same number of assignments over time
- some courts may require lawyers to be on the duty lawyer roster to receive assignments.

If you're not available to accept rotational assignments for more than 10 working days, make sure you advise us by emailing the legal aid office managing the relevant court or

emailing legalaidprovider@justice.govt.nz using the Criminal Case Assignment Availability form.

If you don't want to receive assignments in the lead-up to this time or for a short time afterwards, you need to let us know as the hold only relates to the date the assignment is made rather than any known court hearing date.

If you are unable to accept assignments for a period less than 10 days, please notify the legal aid office managing the relevant court.

Some exceptions to the rotational assignments apply in limited circumstances. For example, if you have provided initial advice as part of the PDLA scheme. See the Grants Handbook for more information.

Assignment

Lawyers are generally notified of the assignment by email. The assignment is deemed to be accepted unless you contact the Commissioner to decline it.

Cases requiring a Criminal PAL 3 or 4 lawyer

For a case requiring a Criminal PAL 3 or 4 lawyer, a client may nominate a preferred lawyer, otherwise the Commissioner will assign one by rotation.

The preferred lawyer must have:

- been directly approached by the aided person or
- represented the person on other matters within the last 5 years or
- been specifically recommended to the person by someone they trust or
- provided advice to the client as a PDLA lawyer and hold the appropriate legal aid provider approval.

The Commissioner won't usually assign a lawyer based outside the location where the case will be heard. An exception will be made if the preferred lawyer agrees to pay all the travel costs associated with the case as long as there will be no disruption to the hearing schedule. All requests for exceptions will be considered on their merits.

Rotational assignments

For clients without a preferred lawyer, a rotational assignment system ensures that cases requiring a Criminal PAL 3 or PAL 4 lawyer are allocated fairly and evenly.

Before making a rotational assignment, we contact each lawyer on the list in order. The case will be assigned to the first lawyer available and who considers the case to be within their expertise.

Public Defence Service assignments

Public Defence Service (PDS) lawyers defend people on criminal charges who are eligible for legal aid. PDS operates at all criminal courts in the Auckland region, Wellington, Hamilton, Tauranga, Hawke's Bay, Christchurch and Dunedin.

PDS provides legal aid services where:

- assignment is from the criminal rotational assignment list for cases requiring a Criminal PAL 1 to PAL 4 lawyer
- they've been assigned as the preferred lawyer for parole, Criminal PAL 3 or PAL 4 criminal cases
- the original case was assigned to PDS and later taken to the Court of Appeal or Supreme Court.

Delegation of work and appointment of other counsel

Delegation

A number of different types of delegation can occur on a legal aid case. Each type of delegation is used in different circumstances depending on the type of work being undertaken.

Lead providers

An assigned lead provider may delegate research and other minor matters concerning a legal aid case to another appropriately approved lead provider. The assigned lead provider is still responsible for the assignment, including invoicing.

The assigned lead provider must attend all substantive or merit hearings, unless the Commissioner has given prior approval for this to be delegated.

Supervised providers

Supervised providers are lawyers who have demonstrated they meet the criteria in the quality assurance regulations but don't have the required experience or competence to be approved as a lead provider.

Approval as a supervised provider is subject to the requirement that the supervised provider is supervised by, and responsible to, an approved lead provider.

Lead providers are responsible for providing adequate supervision of any work they delegate to supervised providers. This includes responsibility for:

- all work completed by a supervised provider
- ensuring all work delegated to the supervised provider is adequately supervised, including where supervision is delegated to another lead provider.

Lead providers must have arrangements in place to provide direct oversight where needed but supervised providers don't need to carry out all work under direct oversight.

Non-lawyers

Non-lawyers are legal executives (qualified and non-qualified), paralegals and law clerks who aren't required to be approved by the Commissioner or contracted to provide legal aid services. They may be delegated activities related to meetings, research, and drafting.

The lead provider is responsible for all work undertaken by a non-lawyer and must provide an appropriate level of supervision. The lead provider must also ensure there is no conflict of interest with the non-lawyer working on a particular matter.

Agents

Occasionally you may need to instruct an agent to act on your behalf when you're unexpectedly unavailable for a short period, due to illness or a conflicting court schedule.

Appointment of second counsel

Second counsel may be appointed on request if the complexity of the proceedings warrants it. Applications must be made to the local legal aid office managing the case. The Commissioner will consider these requests.

There are 2 types of second counsel:

- *co-counsel* – an approved lawyer with equal listing or higher
- *junior counsel* – a legal assistant role.

Co-counsel

Co-counsel may be considered for cases expected to run for a trial period of more than a month or where the charges, issues of law and evidence are large and complex and the Crown is represented by 2 or more senior counsel.

If, for any reason, the lead provider is unable to complete the trial, the second counsel is expected to continue with the trial. This means co-counsel must have the equivalent approval level as the lead provider.

Junior counsel

A junior counsel may be considered for cases where the charges, issues of law or evidence are large and complex and there's a substantial volume of documentary evidence. The Crown must also be represented by at least 2 counsel.

The junior counsel takes a secondary role under the supervision of the lead provider and isn't permitted to undertake the substantive hearing even if the lead provider is unavailable.

Junior counsel can be of a lower listing approval category than the lead provider and will be remunerated up to their own approval category (not the proceedings category of the case).

Legal aid fees

Most legal aid operates in a system of fixed fees and maximum grants for legal aid services. Fixed fees aim to benefit lawyers and clients by providing transparency and certainty and ensuring that payments to lawyers are consistent across the country. Instead of paying lawyers an hourly rate, fixed amounts are paid for completing specific activities. Fixed fees don't differentiate between lawyers' levels of experience.

The framework recognises that while few cases are identical, they generally move through consistent and well-defined stages of preparation, although some may require additional specific activities.

Proceeding steps and fixed fee schedules are used to determine the maximum grant available for each legally aided proceeding and provide a transparent and consistent basis for the decisions made by the Commissioner. Lawyers are expected to be familiar with these and to invoice accordingly.

Each fixed fee schedule is comprised of 'activities', 'fees' and 'tasks'. For each grant of aid, the relevant grants schedule sets out the fees available for the particular case.

Criminal fees

For criminal cases, different fixed fees are payable depending on the seriousness of the charges faced by the client. The fee structure varies between Crown and Police proceedings but both structures allow lawyers to claim fixed fees for all activities associated with a standard case. The fixed fee structure for Police prosecution proceedings has been specifically designed to support early preparation and timely disposal of cases.

All applications for criminal legal aid are managed as a fixed fee, complex or high cost case:

- The maximum grant for fixed fee cases is expressed in set dollar amounts for specified activities and pre-approved disbursements.
- For complex cases, the maximum grant contains a mixture of fixed fees, fees approved on an hourly basis, and disbursements requiring prior approval.
- The maximum grant for a high cost case is set on an hourly basis.

Family fees

All applications for family legal aid are managed as a fixed fee or fixed fee plus case:

- The maximum grant for fixed fee cases comprises set dollar amounts for specified activities (as per the fixed fee schedules) and pre-approved disbursements.

- For fixed fee plus cases, the maximum grant may contain a mixture of fixed fees, fees approved on an hourly rate basis and disbursements.

Civil fees

Some specific civil applications are assessed under the fixed fee framework including ACC and employment proceedings, proceedings under the Victims' Orders against Violent Offenders Act 2014, proceedings under the Public Safety (Public Protection Orders) Act 2014, and children's workers exemption appeals under the Vulnerable Children Act 2014.

Other civil proceedings don't have a fixed fee schedule and are paid on the basis of defined activities and guideline hours. Lists of proceedings under each framework, and common scenarios are listed in the grants handbook.

The maximum grant for fixed fee cases comprises set dollar amounts for specified activities (as per the fixed fee schedules) and pre-approved disbursements.

Amendment to grant and 'fixed fee plus'

Where the fixed fees are considered inadequate in the circumstances of a specific case, you may wish to seek an amendment to the legal aid grant. You should submit an amendment as soon as you identify that a specific fee is inadequate. A case will be referred to as a 'fixed fee plus' case when an amendment is approved.

An amendment is also required when the fixed fee schedules state that an estimate is required for a particular activity or when prior approval is required for a disbursement. The amendment must meet specific criteria and, if approved, the applicable fixed fee will be replaced by hours at your legal aid hourly rate.

Interim grants

An interim grant is an approval of a limited allowance to enable the need for a full grant to be determined. Approval will be given only where an informed decision as to merits or prospects of success is required such as in complex civil cases or grounds for an appeal. This is not a 'fast-tracking' process nor is it for the general gathering of information.

If the interim grant is approved then the specific purpose, maximum grant and conditions of the grant will be advised. An amendment to the grant will be considered only if it's consistent with the original purpose of the interim grant.

The interim grant doesn't establish an ongoing entitlement to legal aid. It simply ceases when the Commissioner either approves or declines the application for a full grant or decides the interim grant should cease as appropriate.

Invoicing

Claims for payment must be made on the appropriate forms to the relevant legal aid office. Fill out the form and email it to your local legal aid office to ensure prompt payment.

For all legal aid invoices, including work billed as disbursements and work undertaken prior to aid being granted, the timeframe set by the Regulations is 6 months from the day after the services are provided or, in the case of fixed fee arrangements, 6 months from the day after services are completed. If your invoice is outside these timeframes, the Commissioner may decline your payment.

We recommend you regularly invoice on all cases to ensure that you don't miss out.

Legal aid debt

At the beginning, during, or end of the case, your client may have to repay some or all of their legal aid. Some exceptions apply – check the grants handbook, or with the grants officer or the Debt Management Group if you have any questions. Exceptions to repayment either arise through legislation or through the consideration of a write-off application.

The prescribed repayment amount is based on gross household income, family size and capital. It's calculated at the time the application is made and should be explained when legal aid is granted. The maximum repayment is capped by the prescribed repayment amount, unless there are proceeds of proceedings. It won't, however, exceed the total cost of services.

If your client receives costs or cash proceeds of proceedings, you must hold a sufficient amount to cover the costs of services in a trust account until the Commissioner lets you know the client's final repayment amount. Please note that the cost of services can be higher than anticipated in cases that were reassigned to you.

Proceeds of proceedings may trigger a client's repayment obligation (or increase the client's maximum repayment amount) and funds need to be held in a trust account to pay any amount owed to the Commissioner. Under section 107 of the Act, legal aid lawyers are required to protect the Commissioner's position in relation to charges and proceeds of proceedings.

A repayment may be secured by requiring the client to authorise a charge to be registered over property or by the Commissioner registering a caveat on the property. Interest will be charged on all outstanding finalised debts 6 months after closure of a case.

Need more information?

Visit the Ministry of Justice website for information about forms, fees and policies relating to legal aid and how these may affect your client.

Useful documents and forms on the website include:

- the legal aid fixed fees schedules and proceeding steps
- the legal aid disbursements policy
- application forms for applying to become a legal aid provider
- invoice forms
- the provider grants handbook
- information on the legal aid quality assurance framework
- news for legal aid lawyers.

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