



MINISTRY OF  
**JUSTICE**  
*Tāhū o te Ture*

# Part 2 - Audit and Monitoring

Operational Policy

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# Overview of Audit and Monitoring

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## Overview

### About this part

This part of the Provider Manual describes the Ministry of Justice's (Ministry's) auditing and quality assurance processes for providers of legal aid services or specified legal services. The Ministry's auditing and quality assurance processes include:

- checks on providers carried out by the Ministry; and
- audits of providers by external auditors.

### Purpose

The purpose of the Ministry's quality assurance processes is to ensure that legal aid services are delivered in an effective and efficient manner, in accordance with legislative, contractual and professional obligations.

### Glossary of terms

A glossary of the key terms used in this part can be found in Appendix 1 – Glossary.

### References

References to 'the Act', 'regulations' or legislative provisions refer to the Legal Services Act 2011 and Legal Services (Quality Assurance) Regulations 2011. Any other Act mentioned is named in full.

### In this part

This part contains the following chapters and appendices

Chapter	
1	Quality Assurance Checks
2	Audits
Appendix 1	Glossary

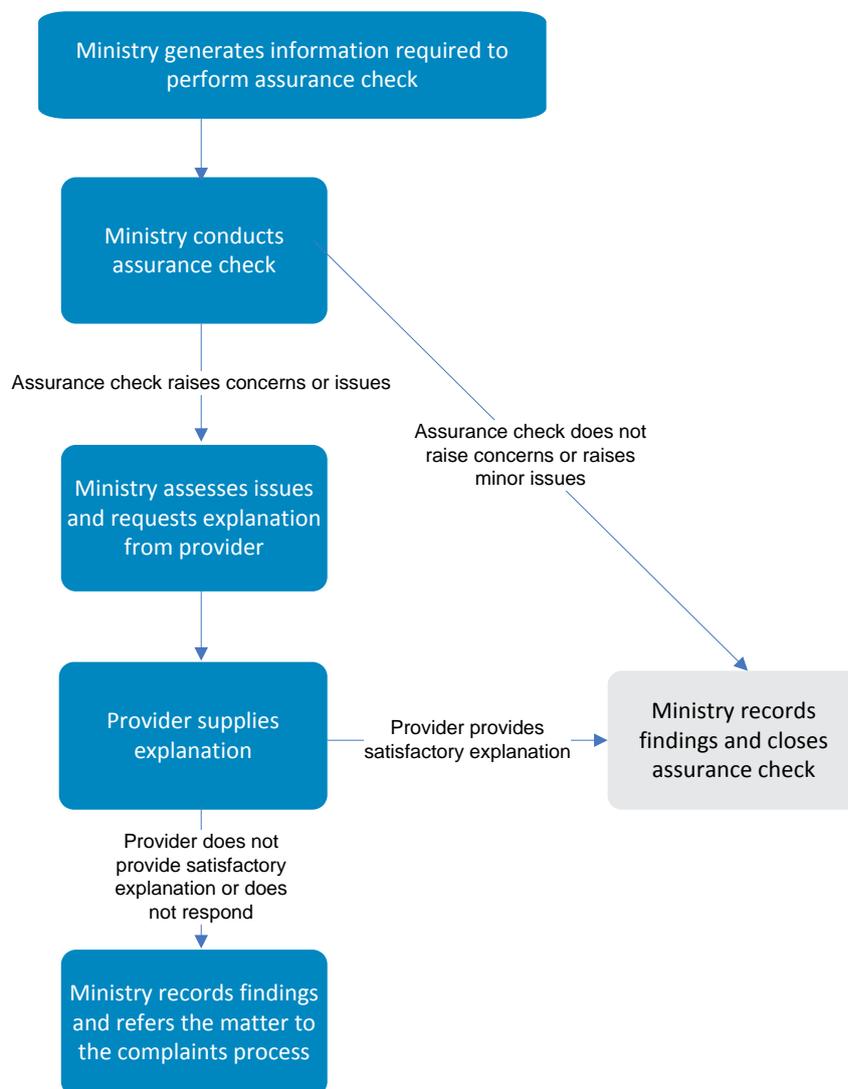
# Chapter 1 – Quality Assurance Checks

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## Overview

### Process

The diagram below shows the process for assurance checking providers



## Legal references

This chapter contains the following reference to the Legal Services Act 2011:

Section	Title
88	Ministry may carry out quality assurance checks

# Purpose and scope of quality assurance checks

## Purpose of quality assurance checks

The purpose of quality assurance checks is to ensure that providers (approved and contracted) are compliant with:

- the Act
- the provider's contract with the Ministry (including the Practice Standards for Legal Aid Providers)
- the provider's professional obligations, and
- the Ministry's policies and procedures.

Quality assurance checks enable the Ministry to:

- identify providers who may not be complying with these obligations, and
- refer those providers to any of the following as appropriate:
  - Audits
  - Complaints Management; or
  - Cancellation of Approvals

## Scope of quality assurance checks

The scope of assurance checking is to identify:

- whether the work invoiced by the provider was actually completed
- how many hours were invoiced by the provider (within a specified timeframe)
- how many cases were assigned to the provider (within a specified timeframe)
- whether work undertaken by other providers engaged by the lead provider on a legal aid assignment was invoiced accurately
- whether the work completed by the provider was justified, or is able to be justified
- whether the provider advised the Ministry of any change to the merits of the case (for family cases)
- whether the provider advised the Ministry of any change to the financial eligibility of the legally aided person, or to other conditions of the grant
- whether any disbursements incurred were necessary, and billed on an actual and reasonable basis,
- whether the provider has correctly applied the funding eligibility test for Family Legal Advice Service
- whether the Family Legal Advice Service provider has retained evidence of their client's identity and financial eligibility, and complied with principles 12(4) of the Privacy Act 1993, and
- any other problems with any aspect of the provider's conduct that the Ministry deems appropriate to check

# The quality assurance checking process

## List of providers for assurance checking

The Ministry will generate any information that is required to form a list of providers for assurance checking.

**Note:** Providers are selected depending on the focus of the quality assurance check

## Ministry records

Files may be requested from the Legal Aid Office for review as part of the assurance checking process.

## Checking information and identifying areas of concern

The Provider Services Team reviews the content of the reports, and any other documents, to determine whether the provider appears to be compliant with:

- the Act
- the provider's contract (including the Practice Standards for Legal Aid Providers) with the Ministry
- the provider's professional obligations; and
- the Ministry's policies and procedures

## Provider is compliant

If the documentation (on file and requested) provides sufficient evidence that the provider appears to be compliant, no further action is required and the checking process is complete. In this case, a member of the Provider Services Team:

- records the findings
- returns any requested documentation to the provider, and
- returns the Ministry file to the Legal Aid Office

## Requesting explanation from provider

If the Ministry finds that the provider is not compliant with quality assurance checks, the Ministry may request additional documentation or an explanation from the provider. The provider must provide the documentation or explanation within ten working days.

If ...	then ...
the provider supplies a satisfactory explanation	the Ministry records its findings, and closes the quality assurance check.
the provider supplies an unsatisfactory response, or does not respond	the Ministry records its findings, and refers the matter to the complaints or audit process.

# Outcomes of assurance checking

## Actions taken

When a quality assurance check of a provider has been completed, the Ministry may take one or more of the following actions.

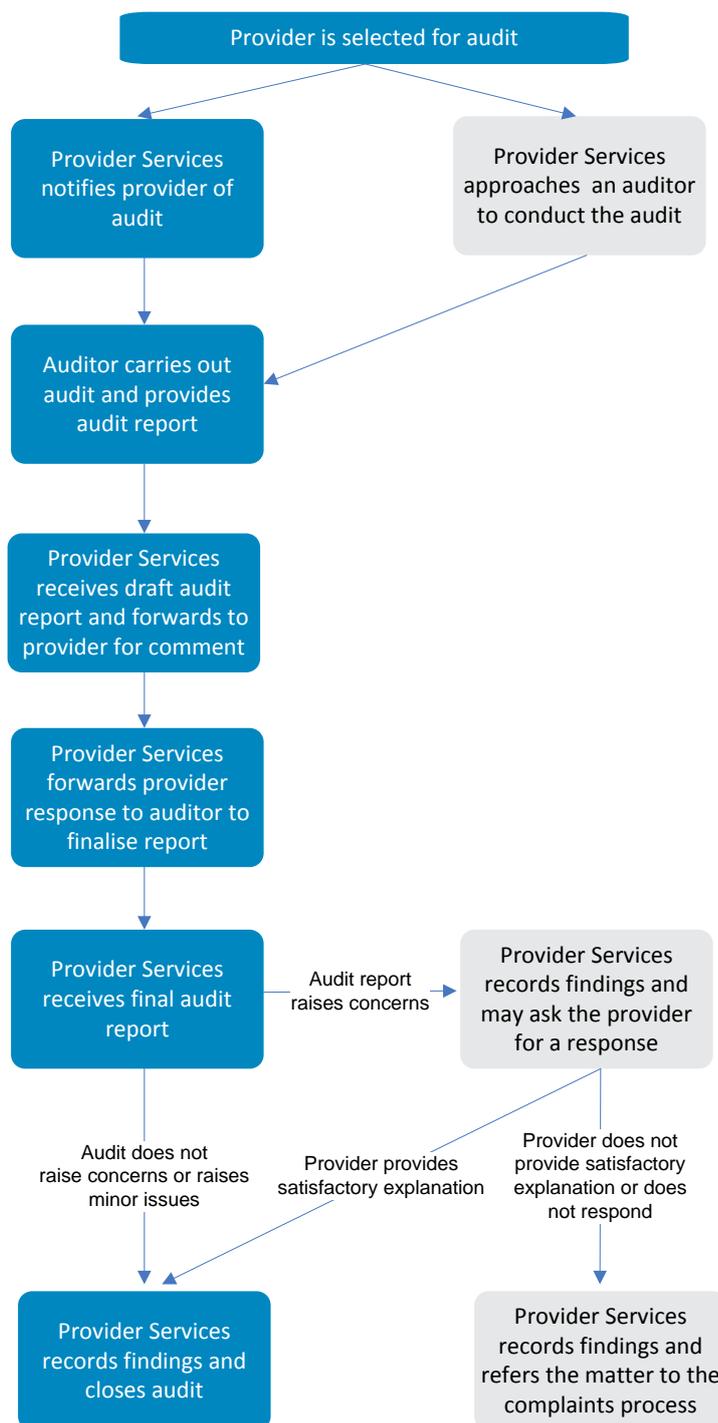
If the Ministry finds that the provider...	then ...
appears to be compliant with the obligations being checked	the Ministry records its findings, and closes the quality assurance check.
does not appear to be compliant with the obligations being checked	the Ministry may refer the matter to the complaints process audit process, or performance review process.

# Chapter 2 – Audits

## Overview

### Process

The diagram below shows the process for auditing approved providers.



## Legal references

This chapter contains the following references to the Legal Services Act 2011:

Section	Title
91	Secretary may audit providers
92	Compliance with audits
109	Disclosure of privileged communications under section 92 or 96

# Section A – General audit information

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## Purpose and scope of audits

### Purpose of audits

The purpose of an audit is for the Secretary to assess and review the quality and value of the services supplied by the provider (approved and contracted).

### Scope of audits

The audit may include an assessment of the provider's compliance with:

- any conditions imposed on the provider's approval
- legislative requirements
- the terms and conditions of the contract for services (including the Practice Standards for Legal Aid Providers)
- guidelines and policies issued or made by the Secretary; and
- any substantial or unresolved complaints concerning delivery of legal aid services or specified legal services.

### Legal professional privilege

Laws privileging communications between a provider and a legal aid client do not apply to the disclosure of information required for auditing purposes.

Information that is subject to legal professional privilege and produced for the purposes of an audit or investigation must not be used in:

- any proceedings against the client; or
- any way that is detrimental to the client.

**Reference:** Sections 92 and 109

## Reporting requirements

### Audit Report format

Audit reports must include the following:

- method – objectives, scope, approach and criteria
- an overall rating and conclusions
- key audit findings/observations, and
- key recommendations, including any corrective action.

The auditor will also highlight in the audit report any concerns or findings that the auditor thinks may warrant more detailed investigation. For each client file the audit report will provide:

- an outline of the legal aid case (i.e. charges laid or type of proceedings)
- details of any items not contained within the file which the auditor would reasonably expect to see (such as time records, file notes, client care information and submissions/memorandum of counsel)
- specific details of the areas of satisfactory practice
- specific details of any inadequacies within the advice given or documents produced, and
- a summary of the quality and value of services provided.

### **Availability of Audit Reports**

Audit Reports are held by the Ministry in the provider's file. They are only accessible to Ministry staff to fulfil the Ministry's responsibilities.

For reporting purposes, audit results may be reported to the Secretary in a consolidated format.

The Ministry may publish the overall results of the annual Quality and Value Audit programme in a consolidated format on its website.

### **Official Information Act**

If an Audit Report or quality assurance checking report is requested under the Official Information Act 1982, the Ministry will, subject to the provisions of the Act, delete any reference that might identify the provider or aided person.

**Note:** Under the Official Information Act 1982, the Ministry may disclose personal information where the Ministry has determined that the privacy interest identified is "outweighed by other considerations which render it desirable, in the public interest, to make that information available."

## **Failure to co-operate**

### **Cooperation with auditor**

To co-operate with the auditor, the provider must:

- give the auditor access to all relevant documents
- answer any questions fully, frankly, promptly, and in the form required by the auditor; and
- permit, and if necessary assist, the auditor to make copies of documents.

**Reference:** Section 92(1)

### Failure to co-operate with audit

The table below outlines the process that takes place if a provider fails to co-operate with an auditor.

Stage	Description
1	The Secretary, on behalf of the auditor, warns the provider in writing that: <ul style="list-style-type: none"><li>• the required level of cooperation is not being provided; and</li><li>• the Ministry may suspend any claims for payment until it is satisfied the provider is co-operating with the auditor.</li></ul>
2	If the provider's cooperation continues to fall below the required level and is not likely to meet the requirements, the auditor advises the Ministry of this
3	The Secretary then: <ul style="list-style-type: none"><li>•suspends payments of any claims currently lodged by the provider; and</li><li>•notifies the provider that payments will remain suspended until the Ministry is satisfied that the provider is co-operating with the auditor</li></ul>
4	The Secretary may terminate the audit of the provider, and may initiate proceedings under section 113 for non-compliance with the audit.

**Reference:** Section 92 and 113

### Monitoring

The Secretary or delegated person provides an overview and monitoring role on the progress of recommendations arising from audits.

# Section B – Quality and Value Audits

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## Overview

### About quality and value audits

Quality and value audits are regular evaluations of the performance of selected approved providers, and their compliance with professional, legislative, and contractual obligations (including practice standards).

### Selection of providers

The number of providers to be audited in quality and value audits is determined yearly. From this yearly quota, the Ministry produces a monthly schedule of quality and value audits. Providers are selected for quality and value audits based on:

- the provider's categorisation by risk profile; and
- selection of individual providers within each risk profile category

### Risk profile categorisation

The Ministry assigns providers a risk profile category based on some or all of the following criteria:

- Financial:
  - amount paid to the provider in the previous financial year
  - the percentage increase in payments over two consecutive years, and
  - comparison of the amount paid to the provider (relative to the number and types of cases) against amounts paid to other providers in that area of law.
- Workload:
  - number of legal aid files assigned during a financial year
  - the percentage increase in cases over two consecutive years, and
  - number of hours invoiced during a financial year in relation to the number of legal aid files (relative to the number and types of cases) assigned.
- Complaints:
  - number of complaints or Ministry concerns received
  - type of complaints or Ministry concerns received, and
  - adverse judicial comments.
- Recent progression to a higher Criminal Provider Approval Level or new approval category.
- Specific concerns resulting from:

- a previous audit Report
- quality assurance checking, or
- the complaints process.

### Selection of audit site

A quality and value audit may be conducted off-site or on-site. In an off-site audit, the provider sends their files to the Ministry and the Ministry sends the files on to an auditor to assess and review the quality and value of the services delivered. In an on-site audit, the assessment is carried out by the auditor visiting the provider's premises.

The Ministry determines the audit site that is most appropriate taking into consideration the provider's risk profile. An on-site audit may be appropriate for a provider where:

- they have had a high number of legal aid cases assigned in the previous financial year;
- they have had high legal aid earnings in the previous financial year;
- they have an overall high risk profile;
- there are 2 or more providers at the same law firm or chambers, notwithstanding that the auditor must conduct a separate audit for each provider;
- there are insufficient closed files due to the nature of the files e.g. in the Waitangi Tribunal area of law; or
- the provider's files are large due to the area of law or nature of the files e.g. in the Waitangi Tribunal area of law.

### Files to be audited

Where a provider is selected for audit, the Ministry provides a list of files to the auditor. The auditor selects the files to be audited from this list.

The list of files prepared by the Ministry may include the following:

- closed files which:
  - include recent activity (within the previous or current financial year), and
  - provide a reasonable spread of the provider's activity in terms of matter type and value
- files with total claims (on each file) of more than \$1,000; and
- files where the provider selected for auditing is the assigned lead provider.

### Notice period

The Ministry gives a minimum of 10 working days' notice to providers that they have been selected for a quality and value audit and the list of files that need to be provided for audit.

### Timeframe

The duration of an audit depends on the cooperation of the provider. Audits are generally expected to be completed within eight weeks, from the initial appointment of the auditor and notification of the provider to the return of files to the provider.

In exceptional circumstances, the Ministry may, on behalf of the auditor, agree to an extension of the audit period.

**Note:** Information about quality and value audits is outlined for the provider in the Terms of Reference.

# Off-site audit process

The following table shows the process once the Ministry has selected an approved provider for a quality and value audit that is conducted off-site.

Stage	Description
<b>The Ministry</b>	
1	Informs the provider of the following: <ul style="list-style-type: none"> <li>• that the provider has been selected for audit;</li> <li>• the nature of the audit (i.e. that it is an off-site quality and value audit) and the scope of the audit;</li> <li>• the timeframe for the audit; and</li> <li>• the audit process.</li> </ul>
2	Requests the selected files from the provider.
<b>The Provider</b>	
3	Sends the requested files to the Ministry for audit.
<b>The Ministry</b>	
4	Once the files have been received the Secretary appoints an auditor after establishing there is no conflict of interest, and forwards the files to the auditor.
<b>The Auditor</b>	
5	Reviews files, papers and any relevant information as necessary, and provides a draft audit report to the Ministry.
<b>The Ministry</b>	
6	Forwards the draft audit report to the provider for comment.
<b>The Provider</b>	
7	Has the option to provide a response to the draft audit report within 10 working days.
<b>The Ministry</b>	
8	Sends the provider's response to the auditor.
<b>The Auditor</b>	
9	Assesses the provider's response and submits a final audit report.
<b>The Ministry</b>	
10	Notifies the provider of the findings of the audit and supplies a copy of the audit report.
11	May request files from the Legal Aid Office to verify or check information in the audit report.
12	May request a response from the provider (depending on the auditor's findings).
13	Assesses the audit report and provider response and determines appropriate follow up action.

14 Returns files to the provider.

## On-site audit process

The following table shows the process once the Ministry has selected an approved provider for a quality and value audit that is conducted on-site.

Stage	Description
<b>The Secretary</b>	
1	Appoints the auditor (once it has been established that there is no conflict of interest).
<b>The Ministry</b>	
2	Informs the provider of the following: <ul style="list-style-type: none"><li>• that the provider has been selected for audit;</li><li>• that an auditor has been appointed;</li><li>• the nature of the audit (i.e. it is an on-site quality and value audit);</li><li>• the location and timing of the audit (to be determined after liaison with the provider);</li><li>• anticipated duration of the audit visit;</li><li>• any relevant health and safety procedures to be followed;</li><li>• the scope and focus of the audit;</li><li>• the timeframe for the audit; and</li><li>• the audit process.</li></ul>
3	Requests that the provider make the specified files available to the auditor on-site (at their office).
<b>The Auditor</b>	
4	Visits the provider's premises and reviews the selected case files.
5	May conduct an on-site interview with the provider and other relevant people nominated by the provider in relation to any matters arising from the client files selected for audit.
6	Supplies a draft audit report to the Ministry.
<b>The Ministry</b>	
7	Forwards the draft audit report to the provider for comment.
<b>The Provider</b>	
8	Has the option to provide a response to the draft audit report within 10 working days.
<b>The Ministry</b>	
9	Sends the provider's response to the auditor.
<b>The Auditor</b>	
10	Assesses the provider's response and submits a final audit report.
<b>The Ministry</b>	

11	Notifies the provider of the findings of the audit and supplies a copy of the final audit report.
12	May request a response from the provider (depending on the auditor's findings).
13	Assesses the audit report and provider response and determines any appropriate follow up action.

# Section C – Special Audits

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## Overview

### About special audits

Special audits are targeted audits which may, for example, focus on:

- the processes and procedures employed by the provider; or
- specific provider attributes (audits may target high value providers or high cost providers for example).

A special audit may be conducted when the Secretary has:

- identified a concern about a provider
- received a complaint about a provider
- undertaken quality assurance checks or a previous audit, and determined that more of an in-depth and targeted assessment is required, or
- established a new legal aid or specified legal service.

## Referral

### Referrals from quality assurance, audit, or complaints processes

A provider (approved and contracted) may be audited under the special audits process when the Ministry has:

- identified a concern about the provider
- referred the provider from another Ministry process, such as:
  - a quality and value audit that requires further investigation
  - quality assurance checking
  - complaints management; or
  - cancellation of approvals
- elected to audit a provider for any reason other than routine selection for quality and value audit.

### Files to be audited

The Ministry may select the files to be audited, or the auditor may select the files while on-site at the provider's office.

### Notice period

The Ministry gives a minimum of one working day notice to providers that they have been referred for a special audit.

## Timeline

The duration of a special audit is flexible, and will be outlined in the Special Terms of Reference tailored for each special audit.

# Special audit process

## Process

The following table shows the process once the Ministry has selected an approved provider for a special audit.

Stage	Description
<b>The Secretary</b>	
1	Appoints the auditor (once it has been established that there is no conflict of interest).
<b>The Ministry</b>	
2	Notifies the provider of the following: <ul style="list-style-type: none"><li>• that the provider has been selected for a special audit</li><li>• that an auditor has been appointed</li><li>• the reason for the audit (i.e. the particular circumstances that have led to the audit)</li><li>• the scope of the audit</li><li>• the timeframe for the audit, and</li><li>• the audit process.</li></ul>
3	Requests that the provider make files available to the auditor on-site (at their office), or supply files to the Ministry.
4	If files are sent to the Ministry, the files are forwarded to the auditor.
<b>The Auditor</b>	
5	Reviews files, papers and any relevant information as necessary (this may take place on-site or at the Ministry).
6	Clarifies information with the provider as necessary.
7	Supplies a draft audit report to the Ministry.
<b>The Ministry</b>	
8	Forwards the draft audit report to the provider for comment.
<b>The Provider</b>	
9	Has the option to provide a response to the draft audit report within 10 working days.
<b>The Ministry</b>	
10	Sends the provider's response to the auditor.
<b>The Auditor</b>	
11	Assesses the provider's response and submits a final audit report.

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**The Ministry**

- |    |   |
|----|---|
| 12 | Notifies the provider of the findings of the audit and supplies a copy of the final audit report. |
| 13 | May request a response from the provider (depending on the auditor's findings).                   |
| 14 | Assesses the Audit Report and provider response and determines any appropriate follow up action.  |

# Appendix 1 – Glossary

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## Glossary of Terms

### ACT

Means the Legal Services Act 2011.

### COMPLAINT

Any expression of dissatisfaction with services provided. This includes all complaints regardless of their origin, i.e. which are categorised by the Ministry as ‘Ministry concerns’ or external complaints.

### COMPLIANCE

There is sufficient and appropriate evidence to demonstrate a particular requirement has been complied with.

### COMMISSIONER

Means the Legal Services Commissioner appointed under section 70 of the Act.

### CONTRACT FOR SERVICES (‘CONTRACT’)

The agreement between the Ministry and an approved provider to supply professional legal services entered into under section 69 of the Act.

### LEGAL AID SERVICES

Means legal advice and representation in relation to legal aid described in the definition of legal services.

### LEGAL SERVICES

In relation to legal aid (or specified legal services) means legal advice and representation and includes assistance with:

- resolving disputes other than by legal proceedings
- taking steps that are preliminary or incidental to any proceedings, or
- arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings.

In relation to anything other than legal aid, includes:

- legal advice and representation and includes assistance (as above), and
- the provision of legal information and law-related education.

### MINISTRY

Means the Ministry of Justice.

### NON-COMPLIANCE

Clear evidence has been collected to demonstrate the particular requirement has not been complied with and is within the scope of the audit.

#### OBLIGATIONS

A provider's obligations as outlined in the Act and regulations, the contract (including practice standards), professional obligations and any relevant policies and procedures.

#### PERFORMANCE REVIEW COMMITTEE

Means the Performance Review Committee (PRC) established under section 79 of the Act.

#### REVIEW AUTHORITY

Means the Review Authority established under section 84 of the Act.

#### SECRETARY

Means the Secretary for Justice.

#### SPECIFIED LEGAL SERVICES

Means legal services specified by the Secretary (see legal services), for example duty lawyer or police detention legal assistance.



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