

**JUSTICE SECTOR**

# **Justice Sector Forecast**

Legal Aid Forecast 2015-2020

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## **Executive Summary**

Legal aid expenditure is forecast to reach \$135.6m by 2019-20. This is 4% above the actual expenditure for 2014-15, and 13% above the level of the 2014 forecast.

The principal contributor to this increase is expenditure on private providers of legal aid in the criminal jurisdiction, which is forecast to rise by 12% by 2019-20 (reaching a level 25% above the 2014 forecast). The principal driver of the increase to private providers is the increase in fees agreed in October 2015.

Most of the other components of legal aid expenditure are projected to remain broadly flat, or at worst very slightly upward. There are a number of potential changes in all jurisdictions – such as an additional emphasis on domestic violence – which cannot yet be quantified. These changes, however, would all result in an increased demand for legal aid.

Waitangi Tribunal legal aid expenditure is expected to fall, as historic claims move toward completion, and contemporary claims, which are expected to incur lower costs, start to be the main focus of the Tribunal's work.

## **1. Purpose and scope of this forecast**

This document presents a summary of the legal aid components of the Justice Sector Forecast.

The forecast covers the amount, in dollars, of expenditure on private providers of legal aid in the following jurisdictions:

- Criminal jurisdiction;
- Family jurisdiction;
- Civil jurisdiction;
- Waitangi Tribunal claims;
- Duty Lawyer scheme;
- Police Detention Legal Assistance scheme.

Expenditure on the Public Defence Service is not within the scope of the forecast. The amount of legal aid debt recovered is also not within the scope of the forecast. The expenditure forecast is that recorded by the Finance division in the Ministry of Justice and includes the impact of the accrual processes.

The forecast period is from July 2015 to June 2020.

## **2. Justice Sector Forecast**

The Justice Sector Forecast covers the prison population (remand and sentenced), non-custodial sentences, legal aid expenditure, Crown Law case numbers, and court-imposed fines, amongst other things. Each major component is published in its own forecast at a different point in the year, and over the course of a year all components of the forecast are updated.

Forecasts for any particular agency are planned to appear at roughly 12-monthly intervals. Thus the next legal aid forecast will appear in or around October 2016. This timetable may be adjusted if there is a need to accommodate new legislative or operational initiatives.

## **3. Summary of environment**

Legal Aid Services (LAS) contributes to justice sector outcomes by designing and delivering legal services and enhancing access for those people who need those services but cannot afford them. LAS aim to deliver these legal services in a way that is sustainable, dynamic, straightforward and responsive to the needs of their primary customer (the legally aided person).

LAS receive and assess applications for legal aid and administer the resulting grants of aid. Legal aid is available in all jurisdictions of the court (criminal, family and civil) as well as for claims before the Waitangi Tribunal. Legal aid also supports the Duty Lawyer scheme (which provides a lawyer at court for those criminal defendants without legal representation) and the Police Detention Legal Assistance scheme (which provides initial legal advice for persons detained by the Police).

LAS are part of the wider Legal and Operational Services Group (LOS) in the Ministry of Justice. LOS also oversees the Public Defence Service (PDS) which provides professional, independent criminal legal aid representation to clients throughout New Zealand. This forecast does not cover the PDS.

The eligibility criteria for legal aid vary from jurisdiction to jurisdiction and are considered on an individual case basis. Eligibility has been changed a number of times in the past. The most recent changes were introduced by the Family Court Proceedings Reform Bill 2013 covering changes to the process and procedure for care of children cases in the Family Court.<sup>1</sup> Criminal legal aid costs were also affected by the implementation of the Criminal Procedure Act 2011 in July 2013 and other changes are brought about by Legal Aid Tribunal decisions regarding the application of legal aid. This forecast has therefore been put together after consultation with policy colleagues, legal aid specialists, courts staff and the finance team.

The criminal jurisdiction is comprised primarily of high volume, low cost cases. The forecast for the criminal jurisdiction uses the same trends in prosecutions as are used in the other parts of the Justice Sector Forecast related to criminal courts. These trends are modified by changes in court process such as those introduced by the Criminal Procedure Act, which affected legal aid by changing the activities required to be undertaken by legal aid providers, and by changes in legislation, to provide the final forecast. Activity in the criminal court system is also a useful basis for forecasting demand for the Duty Lawyer and Police Detention Legal Assistance schemes.

Additional pressures on legal aid will arise when new legislation changes either operational procedure or introduces new categories of offence. We have accommodated the impact of new processes around restorative justice, which have led to increased numbers of hearings. Small changes allowing for prosecutions under the 2015 Harmful Digital Communications Bill, and for the supervision and potential prosecution of New Zealand offenders deported from Australia have also been included. The forecast includes the overall cost year on year of increases in fees in the criminal jurisdiction as agreed in October 2015. There are other items which are likely to affect expenditure on legal aid during the lifetime of the forecast, but which are still unknown as regards amount or timing. In the criminal jurisdiction these include potential changes to the handling of family violence offences.

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<sup>1</sup> The latest version of the eligibility guidelines (updated July 2015) can be downloaded from:  
<http://www.justice.govt.nz/services/information-for-legal-professionals/information-for-legal-aid-providers/legal-aid-provider-manuals/grants-manual/grants-manual>

A further key impact has been the difficulty in maintaining the PDS target of 33% of criminal cases – currently only around 29% is being achieved. This has resulted in a greater proportion of cases going to private legal aid providers, and hence a greater cost to legal aid expenditure. Currently resource limitations mean that PDS handle a fixed number of cases, rather than working to a percentage-based target. Our expectation is for a small but steady increase in the numbers of legally-aided criminal cases, which will translate into a slowly decreasing percentage of cases allocated to the PDS.

We have projected trends showing a slight increase in the family jurisdiction, but there are again some changes in prospect that we currently have insufficient information to quantify. These include potential changes in the approach to family violence incidents. Such changes would have some 'spill-over' effect in the family jurisdiction. A further driver is the extent to which the Family Justice reforms as a whole achieve the expected benefits. In the civil jurisdiction we have projected broadly flat trends.

All proposed changes in the criminal, family and civil jurisdictions are upward pressures, and some of them are likely to be substantial.

Waitangi Tribunal legal aid is subject to yet another set of drivers. At any given time, there are only a small number of complex and high-cost grants of aid for cases before the Tribunal. This is also an area where issues concerning legal aid are decided by evolving case law. Agreements such as the Trans-Pacific Partnership also prompt Waitangi Tribunal cases. There are, however, relatively few historic claims still under consideration, which are being steadily resolved and should be largely completed within or shortly beyond the timeframe of the forecast. As they complete, the Tribunal's work will shift to contemporary claims (such as those relating to water and geothermal resources) which are expected to require less funding. We have accommodated this change by assuming a slow decline in Waitangi expenditure to a new lower level. Nevertheless, the Waitangi Tribunal legal aid forecast, in particular, is subject to a high degree of uncertainty.

## **4. The forecast**

This section reports first on the total forecast, then goes on to cover each jurisdiction in turn. Trends in expenditure are presented graphically; the numbers behind the graphs appear in the Appendix. A workbook of more detailed data is available on the Ministry of Justice website.

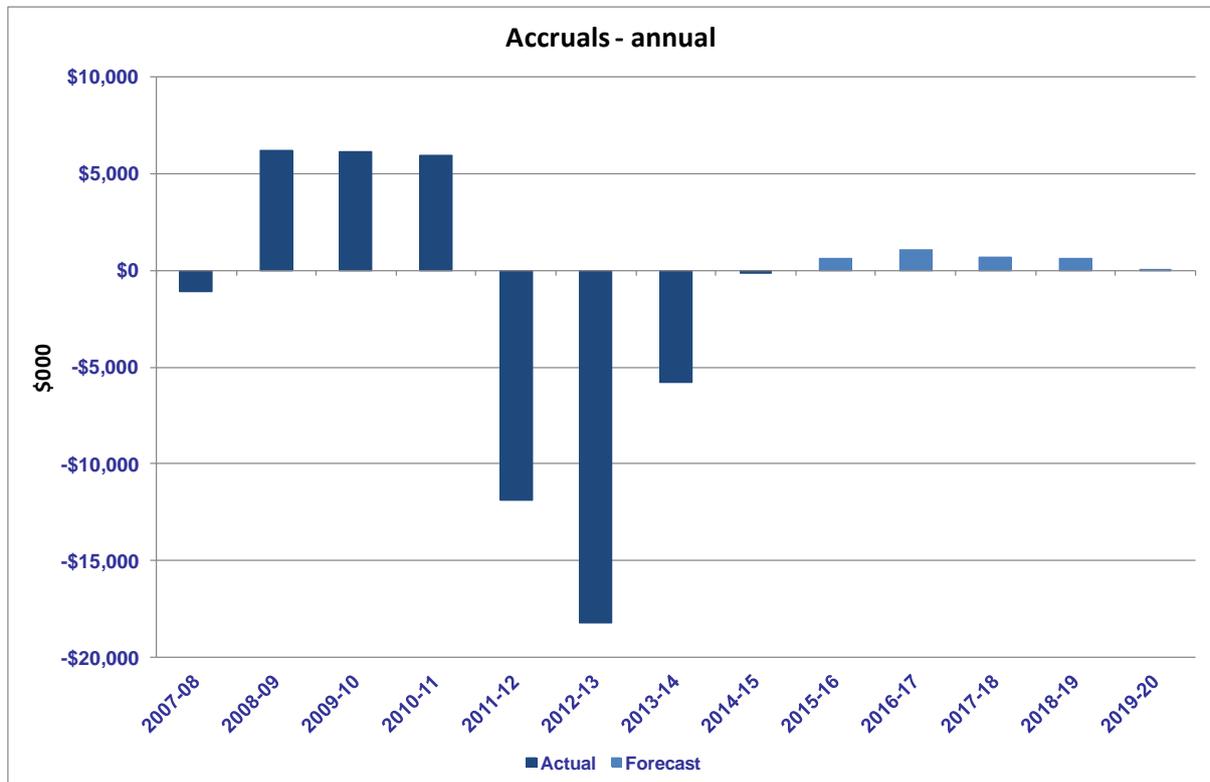
### **4.1 Total legal aid forecast**

The forecast is based on expenditure recorded by the Finance division in the Ministry of Justice. The finance process includes a system of accruals, reflecting the presence of liabilities that have been incurred but not yet paid.

Figure 1 shows the annual change in accruals. Accruals vary according to whether base expenditure is rising or falling, and also if there are changes in the time allowed for the receipt of invoices. This results in a mix of positive and negative changes. The forecast implies greater stability in legal aid expenditure in the future, and thus the forecast changes in accruals are much smaller than in recent years. The increased expenditure resulting from

legislative changes and from the results of reviews means accruals can become positive again, although the absolute values remain small. Accruals are expected to be minimal in Waitangi Tribunal expenditure. We do not formally forecast Waitangi accruals, but we do include them when calculating the total legal aid accrual. There are no accruals related to the Duty Lawyer or Police Detention Legal Assistance schemes.

**Figure 1: Legal aid: change in total accruals**

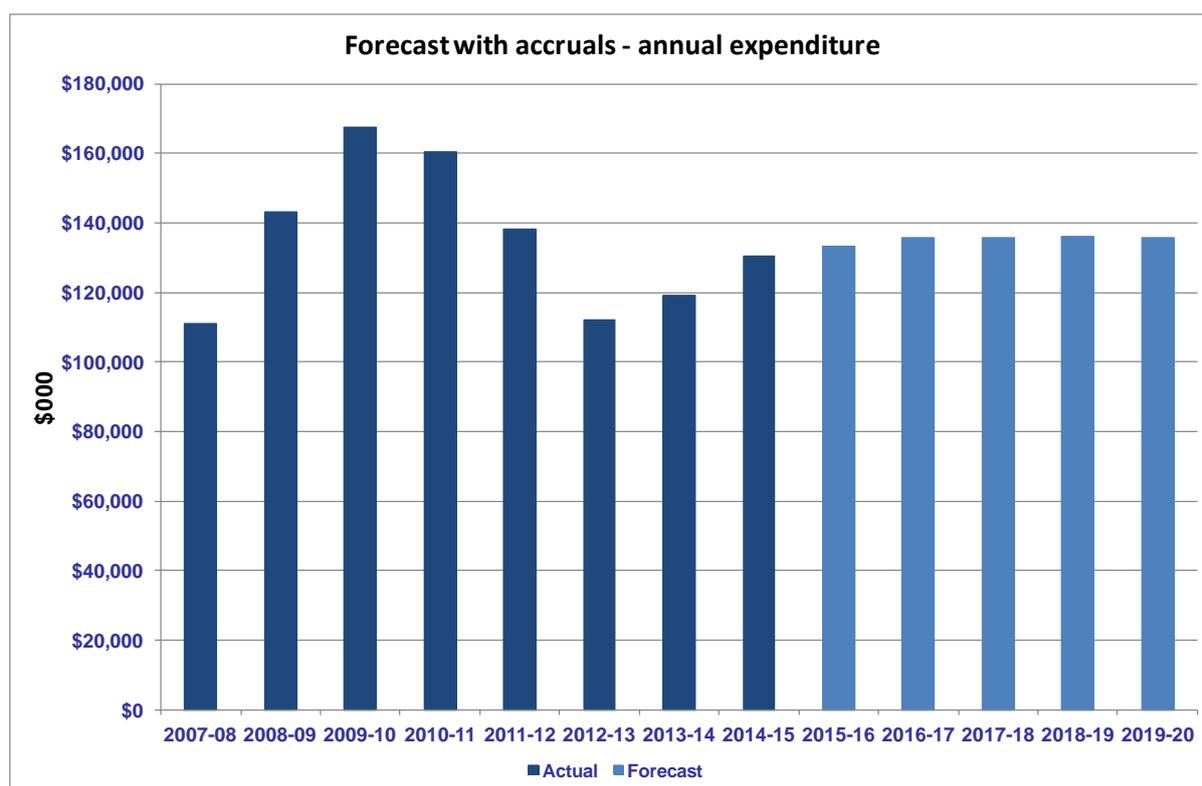


In particular:

- The positive accruals between 2008-09 and 2010-11 arise from increases in expenditure driven by workload (including increased prosecutions and changes in eligibility);
- The negative accruals between 2011-12 and 2013-14 reflect falling workload, but also are a result of changing the time for receipt of invoices.

Figure 2 shows the total expenditure on legal aid once accruals are taken into account.

**Figure 2: Total expenditure on legal aid (including accruals)**



The adjustments for accruals in 2012/13 and 2013/14 depressed the total expenditure for those years, with a resulting increase in 2014/15. Thereafter we are projecting a broadly flat forecast.

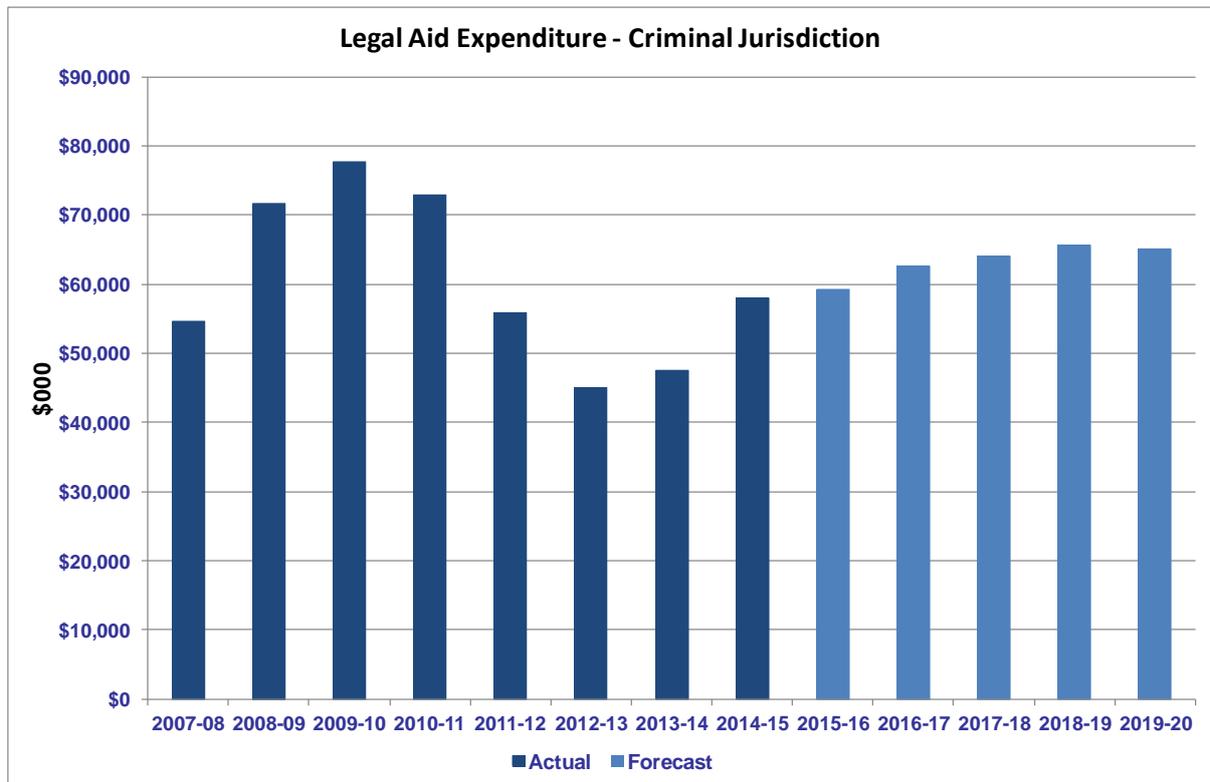
Legal aid expenditure on private legal aid providers has fallen substantially since the peak in 2009-10. The main drivers in recent years have been a fall in the number of criminal prosecutions, expansion of the PDS, changes to payment frameworks and new operational policies and procedures. In future years, prosecution numbers are expected to rise slightly, while the PDS workload is expected to remain constant. The extra cases will therefore be managed by private providers, resulting in an upward pressure on non-departmental expenditure. Against this, Waitangi expenditure is expected to fall, as historic claims are concluded. Contemporary legal aid payments for Waitangi Tribunal cases are expected to be less than historic legal aid. Reviews of legal aid fees and other commitments arising from legislation offset these downward pressures to leave base expenditure broadly level through the forecast period.

## 4.2 Criminal jurisdiction

Figure 3 shows expenditure on private providers<sup>2</sup> for legal aid in the criminal courts.

<sup>2</sup> That is, excluding costs associated with the Public Defence Service.

**Figure 3: Total expenditure on private providers in the criminal jurisdiction including accruals**



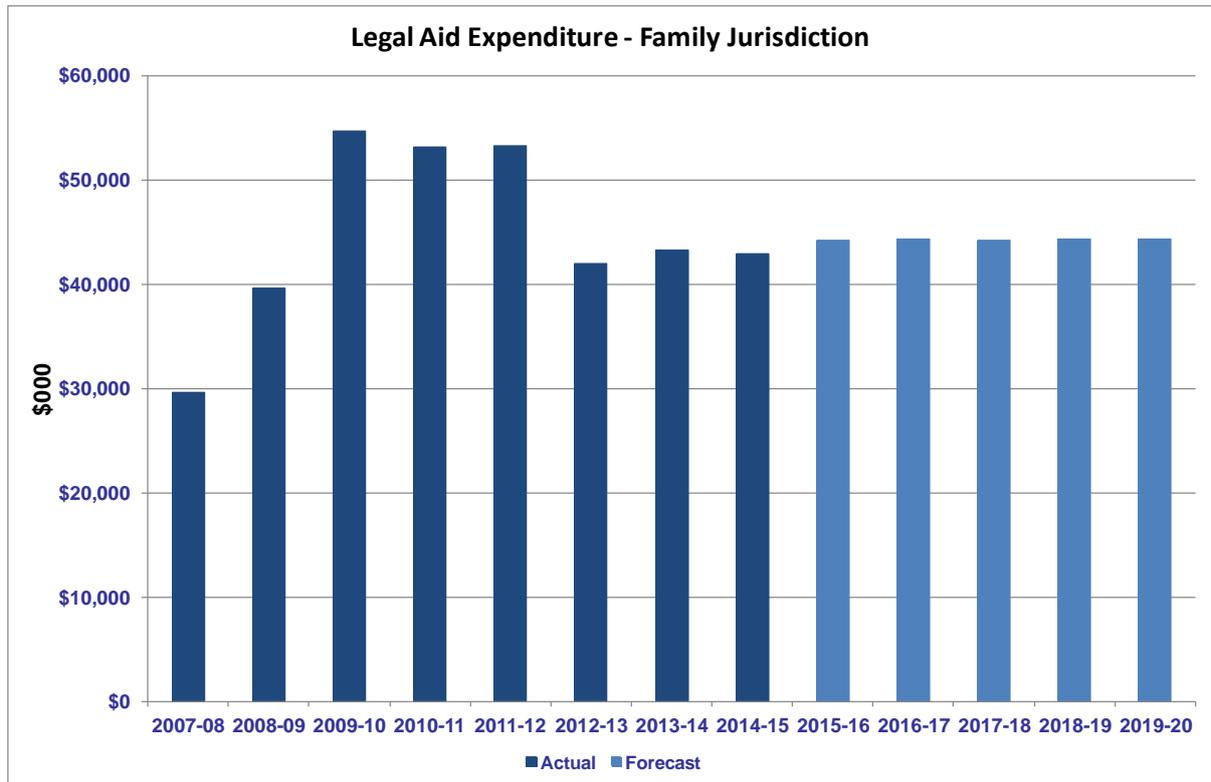
Legal aid expenditure in the criminal jurisdiction broadly follows the trend observed in prosecutions: a rise to 2009/10 followed by a reduction as the Policing Excellence initiative was introduced and also as the percentage of cases taken by the PDS increased. Policing Excellence, amongst other things, involved a greater use of alternatives to prosecution, which reduced the flow of cases into the system and thus the number of people applying for and being granted legal aid. Policing Excellence has now been fully implemented. The drop from 2011/12 to the lower levels in 2012/13 and 2013/14 is due to a change in the handling of accruals.

Prosecutions are expected to remain broadly level over the forecast period. There has been some shift in the last year to more serious charges resulting in a rise in applications for legal aid, but it is not clear whether that trend will be sustained. There are some upward pressures from new legislation (though these are small). The most significant impact is the staged increase in fees, which takes place over three years from 2016-17, after which expenditure is expected to remain level.

### 4.3 Family jurisdiction

Figure 4 shows expenditure on private providers of legal aid in the Family Court.

**Figure 4: Total expenditure on private providers in the family jurisdiction including accruals**



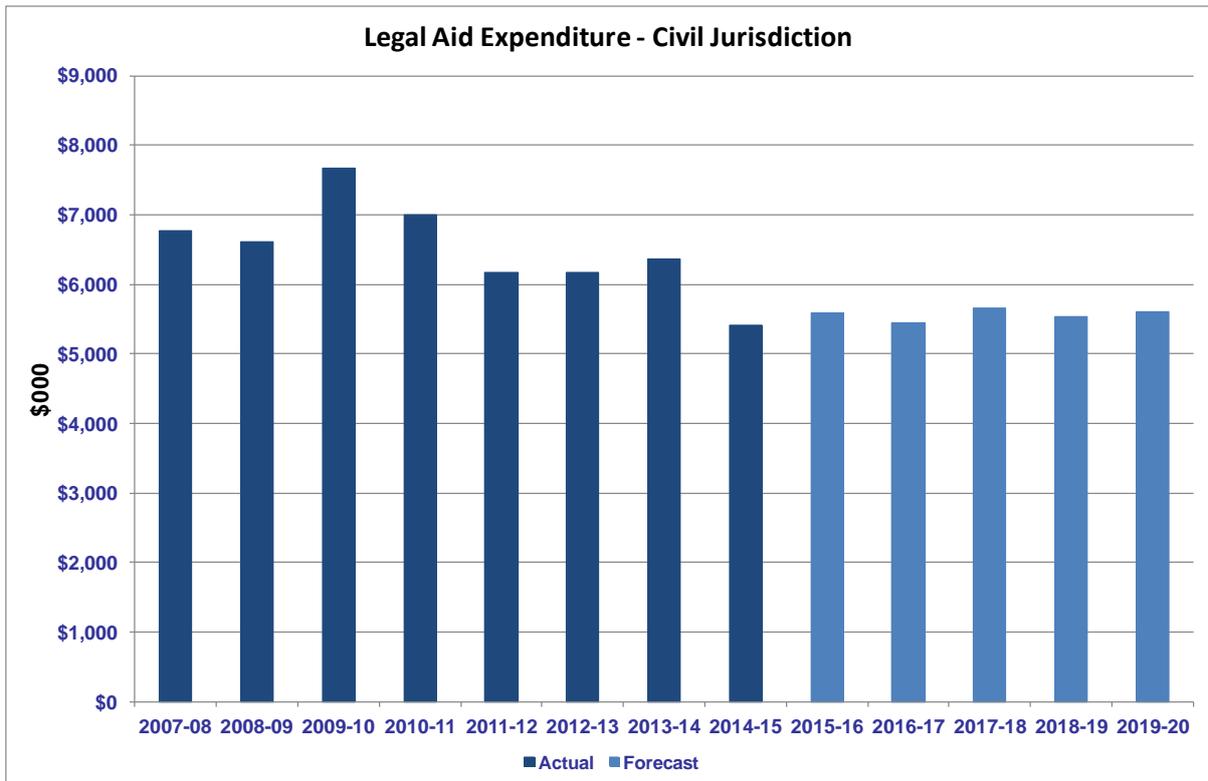
The drop in 2012/13 is due to the handling of accruals.

We have projected flat trends in the family jurisdiction, pending the availability of information regarding the content and timing of legislative and operational changes.

#### **4.4 Civil jurisdiction**

Figure 5 shows expenditure on private providers of legal aid in the civil courts.

**Figure 5: Total expenditure on private providers in the civil jurisdiction including accruals**

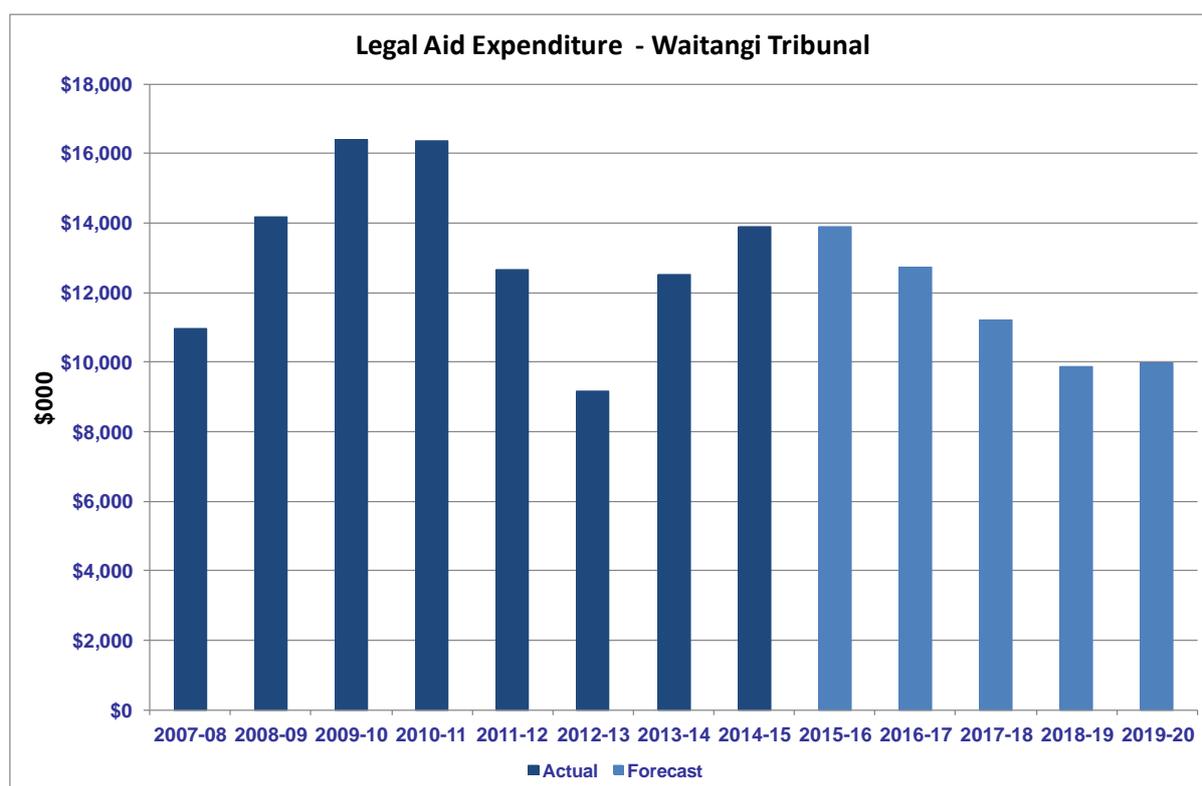


The drop in expenditure between 2013-14 and 2014-15 is due to changes in eligibility. We have projected flat trends in the civil jurisdiction, pending the availability of information regarding the content and timing of legislative and operational changes.

#### **4.5 Waitangi Tribunal claims**

Figure 6 shows expenditure on legal aid for Waitangi Tribunal claims.

**Figure 6: Total expenditure on Waitangi Tribunal claims including accruals**



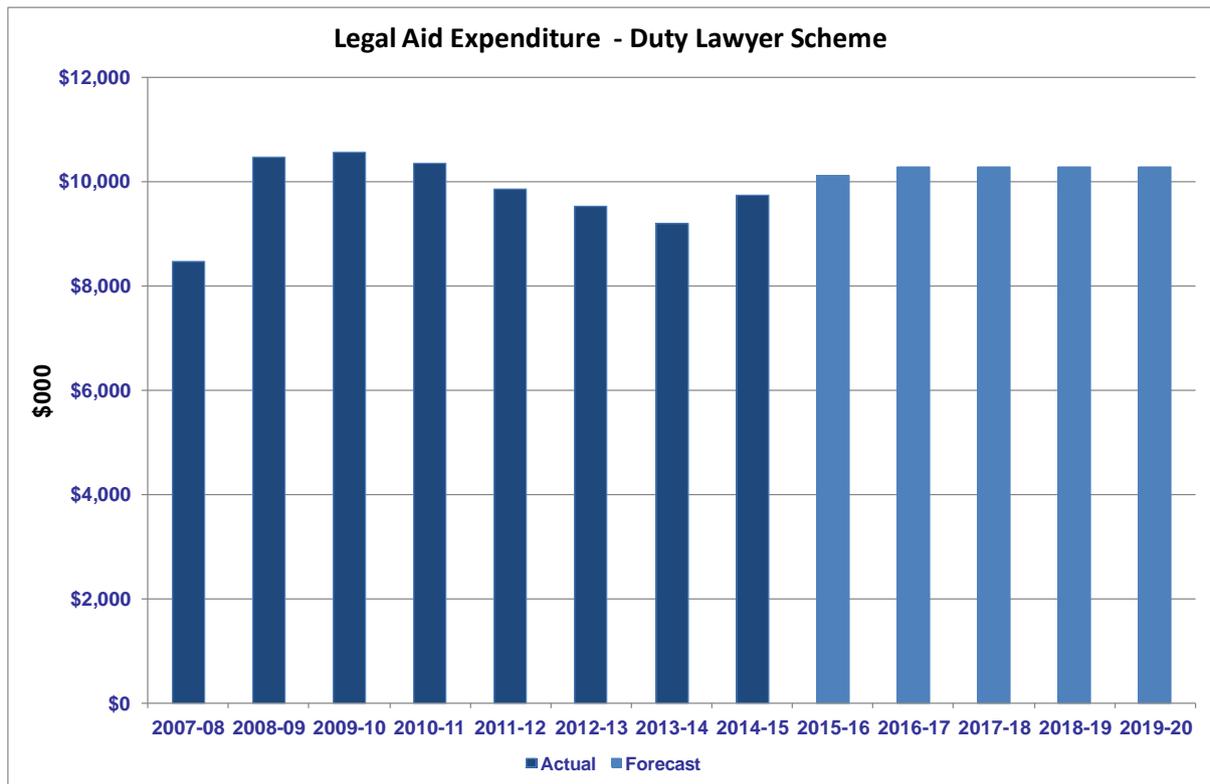
The drop observed from 2011-12 to 2012-13 was as a consequence of changes to the accrual process and does not reflect the underlying trend in Waitangi Tribunal legal aid expenditure.

The last historical claims have been lodged with the Waitangi Tribunal and a substantial number of claims have been recently settled. Work related to these claims is in decline. Contemporary claims can still be lodged and these will continue to attract legal aid. The conditions under which legal aid will be granted for these claims remain unclear, pending resolution in court, so this is a difficult quantity to forecast. Expert opinion is that the amount spent on historical claims will decline from 2015-16, while the amount on contemporary claims coming in its place will be smaller. We have modelled this as a decline to a new level.

#### **4.6 Duty Lawyer scheme**

Figure 7 shows expenditure on private providers of the Duty Lawyer scheme.

**Figure 7: Total expenditure on private providers of Duty Lawyer scheme**

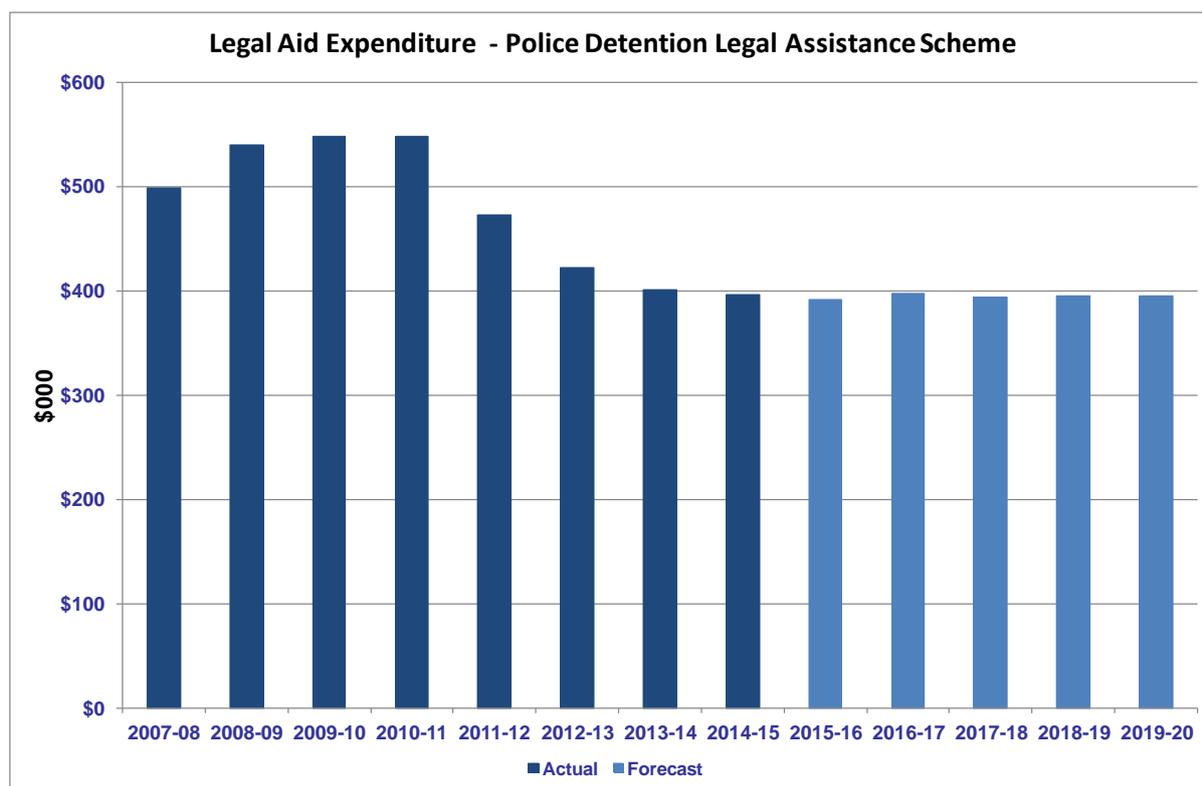


While the numbers entering the criminal courts are falling, courts are still sitting for roughly the same number of hours and duty lawyers are required to provide a service for those sessions. Since 2004, a proportion of duty lawyer work has been undertaken by the PDS, which has resulted in a fall in expenditure on private providers in recent years. However, the resource limitations at the PDS mean that this trend will not continue. We have projected this situation as a small rise followed by a level trend.

#### **4.7 Police Detention Legal Assistance scheme**

Figure 8 shows expenditure on the Police Detention Legal Assistance scheme.

**Figure 8: Total expenditure on Police Detention Legal Assistance scheme**



Expenditure on the Police Detention Legal Assistance scheme is projected to continue roughly at the current level.

## 5. Summary

A key element of the Justice Sector Forecast is the aim to ensure consistent use of assumptions across the sector where there are shared processes and flows. This is applicable for only part of the legal aid forecast: the expenditure on criminal legal aid, along with (to some extent) the Duty Lawyer scheme and the Police Detention Legal Assistance scheme. The remainder of this forecast involves other courts and jurisdictions, which do not share the drivers of criminal prosecutions.

The same principles that drive the other components of the forecast still apply. It is important to consult widely about historic, current and proposed trends in the legal aid system, all the time checking against the data available to us. This allows us to establish a coherent basis for making a forecast, and also a yardstick against which future behaviour of expenditure can be assessed.

The drivers of legal aid vary from jurisdiction to jurisdiction. In the criminal jurisdiction, we can observe the rise and fall in demand for legal aid following the rise and fall in prosecutions seen in recent years. The establishment of the PDS lowered the expenditure on private providers. The underlying trend in criminal prosecutions is expected to be flat, although there has been a shift towards more serious cases, which are more likely to be

legally-aided, which has led to a recent increase in the volume of applications for and grants of legal aid. The most significant change is likely to be the increase resulting from the recent review of fees.

In the family jurisdiction, a similar review raised fees from March 2014, which will keep expenditure at roughly its current level throughout the forecast period. The extent to which the Family Justice reforms as a whole achieve the expected benefits will also be a significant driver.

The civil jurisdiction shows a broadly level trend across the forecast period.

Trends in Waitangi Tribunal legal aid are dominated by an expected decline as historic claims are resolved, while the contemporary claims that will replace them are expected to be less costly.

As with all component parts of the Justice Sector Forecast, we will monitor this forecast by comparing it to actual values. The Justice Sector Forecast already provides quarterly monitoring reports that do this. From the next update – covering the quarter ending December 2015 – the total legal aid expenditure will be compared to this new forecast.

Because this forecast has focused on the impacts on legal aid, its conclusions cannot be extended to other parts of the sector. As the rolling forecast process continues, these other parts will be updated in turn.

## 6. Appendix

The appendix contains the data underlying the graphs in the main body of the report. A workbook of more detailed data is available on the Ministry of Justice website.

**Table 1: Legal aid: change in total accruals**

Fiscal year	\$000	
	Actual	Forecast
2007-08	-\$1,125	
2008-09	\$6,151	
2009-10	\$6,089	
2010-11	\$5,922	
2011-12	-\$11,885	
2012-13	-\$18,227	
2013-14	-\$5,819	
2014-15	-\$149	
2015-16		\$617
2016-17		\$1,021
2017-18		\$642
2018-19		\$579
2019-20		\$20

**Table 2: Total expenditure on legal aid (including accruals)**

Fiscal year	\$000	
	Actual	Forecast
2007-08	\$110,978	
2008-09	\$143,047	
2009-10	\$167,629	
2010-11	\$160,350	
2011-12	\$138,328	
2012-13	\$112,202	
2013-14	\$119,322	
2014-15	\$130,360	
2015-16		\$133,332
2016-17		\$135,830
2017-18		\$135,866
2018-19		\$136,037
2019-20		\$135,633

**Table 3: Total expenditure on private providers in the criminal jurisdiction including accruals**

Fiscal year	\$000	
	Actual	Forecast
2007-08	\$54,654	
2008-09	\$71,615	
2009-10	\$77,742	
2010-11	\$72,959	
2011-12	\$55,952	
2012-13	\$44,983	
2013-14	\$47,614	
2014-15	\$58,045	
2015-16		\$59,226
2016-17		\$62,679
2017-18		\$64,067
2018-19		\$65,682
2019-20		\$65,153

**Table 4: Total expenditure on private providers in the family jurisdiction including accruals**

Fiscal year	\$000	
	Actual	Forecast
2007-08	\$29,625	
2008-09	\$39,640	
2009-10	\$54,719	
2010-11	\$53,141	
2011-12	\$53,236	
2012-13	\$41,955	
2013-14	\$43,256	
2014-15	\$42,907	
2015-16		\$44,152
2016-17		\$44,319
2017-18		\$44,251
2018-19		\$44,284
2019-20		\$44,259

**Table 5: Total expenditure on private providers in the civil jurisdiction including accruals**

Fiscal year	\$000	
	Actual	Forecast
2007-08	\$6,775	
2008-09	\$6,611	
2009-10	\$7,664	
2010-11	\$6,995	
2011-12	\$6,167	
2012-13	\$6,169	
2013-14	\$6,356	
2014-15	\$5,404	
2015-16		\$5,579
2016-17		\$5,439
2017-18		\$5,664
2018-19		\$5,532
2019-20		\$5,600

**Table 6: Total expenditure on Waitangi Tribunal claims including accruals**

Fiscal year	\$000	
	Actual	Forecast
2007-08	\$10,962	
2008-09	\$14,183	
2009-10	\$16,401	
2010-11	\$16,359	
2011-12	\$12,642	
2012-13	\$9,162	
2013-14	\$12,503	
2014-15	\$13,879	
2015-16		\$13,879
2016-17		\$12,733
2017-18		\$11,227
2018-19		\$9,880
2019-20		\$9,963

**Table 7: Total expenditure on private providers of Duty Lawyer scheme**

Fiscal year	\$000	
	Actual	Forecast
2007-08	\$8,464	
2008-09	\$10,458	
2009-10	\$10,555	
2010-11	\$10,349	
2011-12	\$9,858	
2012-13	\$9,511	
2013-14	\$9,190	
2014-15	\$9,729	
2015-16		\$10,104
2016-17		\$10,264
2017-18		\$10,264
2018-19		\$10,264
2019-20		\$10,264

**Table 8: Total expenditure on Police Detention Legal Assistance scheme**

Fiscal year	\$000	
	Actual	Forecast
2007-08	\$498	
2008-09	\$539	
2009-10	\$548	
2010-11	\$548	
2011-12	\$472	
2012-13	\$422	
2013-14	\$401	
2014-15	\$396	
2015-16		\$392
2016-17		\$397
2017-18		\$393
2018-19		\$395
2019-20		\$394