

From the Chief Executive



As we come to the end of the year we can proudly reflect that there have been many people who were able to receive publicly funded legal services – whether it was by being represented, or getting advice on their

legal problem, or receiving some piece of information that they needed. At times they might not have got the result they wanted, but the key is whether they had a sense of having a fair go.

But it doesn't stop there. That sense of fairness can affect many other people – particularly family and whanau.

None of that can happen without the commitment of a whole range of people – lawyers (both private and in-house), community law centres, grants officers taking decisions, and a raft of persons with supporting roles. To that end, we are all in the business of helping people access justice, and I would like to extend my thanks and appreciation to all those involved in making this happen during the year.

For me, this year has been one of development and preparing for improvements and change. I look forward to the challenges of that continuing next year, and in the meantime I wish everyone a safe and relaxing break.

Annual Report overview

The Agency's fifth Annual Report has been published and is available on the Agency's website under Publications (www.lsa.govt.nz). The report covers the financial year 1 July 2004 to 30 June 2005.

In brief:

- 61,392 grants of legal aid were approved in 2004/2005
- Unrepresented defendants charged with an offence received 77,880 hours of advice, assistance and representation under the duty solicitor scheme
- Under the police detention legal assistance scheme, 14,769 people questioned or detained by the Police obtained legal advice and assistance from lawyers
- Two more community law centres were supported in becoming established, bringing the total to 27
- A number of reviews arising out of the Legal Aid Improvement Programme were completed, and the Agency will progress the implementation of some of the resulting changes alongside those required by the Legal Services Amendment Bill (No 2)
- A research exercise to assess unmet legal need in the Wellington and Wairarapa regions was completed
- A first stage review of publicly funded criminal legal services was undertaken
- Community law centres and the Agency continued to progress the development of a draft community legal services strategy.

The total legal aid certified claims for the year was \$91.0 million, which includes criminal, civil, family, and Waitangi Tribunal legal aid and related schemes (duty solicitor and police detention legal assistance). This compares with \$84.0 million in 2003/2004 and \$82.3 million in 2002/2003. The increase in certified claims for the 2004/2005 year is attributable predominantly to an increase in Waitangi legal aid certified claims (\$11.0 million for the 2004/2005 year, compared with \$6.9 million the previous year).

Legal aid certified claims for criminal and civil matters also increased in the 2004/2005 year. Criminal legal aid certified claims in 2004/2005 totalled \$40.7 million, an increase of \$2.4 million from 2003/2004. Civil legal aid certified claims (excluding Waitangi) in 2004/2005 totalled \$6.5 million, an increase of \$0.7 million from 2003/2004. Family legal aid certified claims totalled \$26.0 million in 2004/2005, a decrease of \$0.5 million from 2003/2004.

Christmas/New Year arrangements

Legal aid offices

Most legal aid offices of the Agency will be closed from 24 December 2005 to 3 January 2006, inclusive. Providers will be advised of any local variation.

However, where courts are operating and require decisions on granting and assignment for criminal legal aid applications, the Agency will have staff available to make those decisions.

Provider payments

The last payment run for 2005 will be on Thursday 22 December. Recipients of direct credit payments will have funds in their bank account on this date, while cheques will be posted on this date. The first payment run for 2006 will be on Thursday 5 January (direct credits deposited on this date, while cheques will be posted on this date).

Revised ACC Steps

In response to concerns raised by the New Zealand Law Society and the Agency's Public Advisory Committee, the Agency has completed a review of the existing ACC Steps. As part of the review process, the New Zealand Law Society has been consulted on the structure of the revised steps.

Briefly, the structure is:

- A grant of up to 11 hours plus hearing time for the preparation and completion of the review
- A grant of up to 12 hours plus actual hearing time for an ACC Appeal if the provider is different from the provider who carried out the review

- A grant of up to 6 hours plus actual hearing time for an ACC Appeal if the provider is the same provider who carried out the review.

An initial interim grant of up to 3 hours to prepare a legal aid application and opinion may be available in situations where this is warranted.

The revised ACC Steps will be distributed as an update to the provider manual and will also be posted on the Agency's website.

The new steps will be implemented on Monday 30 January 2006. Applications received on or after this date will be administered under the new steps.

Restorative Justice and the Ministry of Justice

The Ministry of Justice funds a number of community providers of Restorative Justice services for adult offenders throughout the country. Currently the administration of this is split between two parts of the Ministry, but work is underway to bring these together.

The Ministry's Crime Prevention Unit funds restorative justice processes through twenty community-based providers located in: Whangarei, Counties/Manukau, Waitakere, Gisborne, Taupo, Rotorua, Tauranga, New Plymouth, Hawke's Bay, Wanganui, Levin, Wellington, Marlborough, Nelson, the West Coast, Christchurch, Rangiora, Ashburton, Timaru, and Oamaru. These providers offer community panel processes and/or victim-offender conferences.

A further twelve restorative justice providers offer victim-offender conferencing through contracts with the Ministry's Courts Operations Unit under what was the court-referred restorative justice pilot that began in 2001. These programmes deal with moderately serious offending, and operate out of the Hamilton, Auckland, Waitakere and Dunedin District Courts. A Ministry-employed Restorative Justice Coordinator is located in these four Courts.

All of these restorative justice providers are the focus of a new initiative led by Alison Hill in the Crime Prevention Unit, which aims to improve the quality of restorative justice practice in line with the 2004 Principles of Best Practice for Restorative Justice Processes in Criminal Cases. This project is developing a comprehensive training and assessment programme for restorative justice practitioners, and will also provide supervision training, improved case management, information for victims

and offenders about restorative justice, and one-off initiatives to improve restorative justice providers' practice.

Other work currently underway in restorative justice is the development of a consistent, rational and long-term framework for funding and for supporting ongoing quality assurance. The Ministry is interested in hearing from practitioners if they have particular concerns about local restorative justice service provision. The Ministry is also happy to answer queries or discuss any issues. Alison Hill can be reached at (04) 4949900 or alison.hill@justice.govt.nz, or Julia Hennessy, Senior Policy Adviser, Restorative Justice on (04) 4949895 or julia.hennessy@justice.govt.nz.

Legal aid and Restorative Justice

The Agency funds limited aspects of restorative justice, as set out in Step 3 of the Criminal Indictable Steps in the Provider Manual and on the Agency's website.

The Agency will pay 1.5 hours guaranteed hourly rate (GHR) for preparation and attendances related to obtaining a restorative justice conference report. In addition, the conference report qualifies as a specialist report and a disbursement up to a maximum determined by Regional Managers for each location may be paid without prior approval. In Auckland, Waitakere, Hamilton, and Dunedin, report preparation is likely to be funded by the Ministry of Justice as outlined in the above article, and providers are reminded that the Agency will not pay additionally for a specialist report.

The Agency does not fund the conference facilitation. Providers are invited to contact the Ministry of Justice to discuss the availability of funded facilitators.

Christchurch office has moved

The Christchurch office has moved premises. Their new street address is Level 1, 256 Oxford Terrace, Christchurch. Their new

postal address is PO Box 130150, Armagh Street, Christchurch. The office's phone, fax and DX numbers have not changed.

Public Advisory Committee

The Public Advisory Committee (PAC) is an advisory body, selected by and reporting to the Agency. PAC is comprised of members representing a wide range of communities of interest, including women, Maori, Pacific peoples, young people, older people, people with disabilities, consumers, the legal profession, community law centres, and refugees and migrants.

The statutory functions of PAC are set out in sections 105 and 106 of the Legal Services Act 2000, and include the provision of advice to the Agency on community concerns about legal aid schemes and



Public Advisory Committee (Left to right): Peter Walker, Kim Morton, Emily Maea, Shae Ronald (Chair), Evan Thomas, Sue Dodds, Anne Stevens

community legal services, unmet legal needs of communities, the funding of community law centres, and legal education and information for the public. Amongst other pieces of work, PAC is currently involved in the Agency's proposed initiatives in Auckland to develop improved community legal services for new migrants and refugees, and people with disabilities.

Penny Nicholas and Dilkie Rajapakse are recently appointed members to PAC representing people with disabilities, and refugees and migrants respectively.

The committee can be contacted through the PAC administrator (mail to: fiona.mckinney@paradise.net.nz) or c/- Frances Blyth, Manager Strategic Development, Legal Services Agency.



Penny Nicholas



Dilkie Rajapakse

Legal aid for LARP reviews

Following a LARP decision that legally aided persons can apply for legal aid to pursue LARP reviews, the Agency is developing a policy on how this process will operate.

In the meantime, the Agency has developed an interim process for such applications. This process is effective immediately. The application for legal aid for a LARP review is to be made on forms 5 and 6.

Where aid is granted for a LARP review, providers will be remunerated at a flat rate of \$150. The flat rate is considered appropriate as the supporting information being presented to LARP should have already been presented to the Agency when seeking the grant. The flat rate may be exceeded where special circumstances can be demonstrated.

Providers are reminded that if they have additional information or argument that has not been presented to the Agency in support of an application for a grant or an amendment, they can ask the

Agency to consider the additional information or argument rather than seeking a LARP review. In the Agency's view, this course of action is the preferred one.

If aid for a LARP review is sought, and information or argument that the Agency is not aware of is to be presented to the Panel, the Agency would have to consider whether there are grounds to refuse aid under section 9 of the Legal Services Act 2000 (for example under section 9(3) and section 9(4)(d)(iii)).

Legal aid will generally not be available for providers to pursue a LARP review in their own name for the amount payable under section 54(3) of the Act because of the eligibility thresholds that would apply under section 7(1)(e).

It is intended that the interim process will be replaced by the final procedure by April 2006. This procedure will be published in the Provider Manual and posted on the Agency's website.

Update on the Legal Services Amendment Bill (No 2)

The Bill has now been reinstated in the House, and the Justice and Electoral Select Committee has scheduled dates to hear submissions.

The Agency's current focus is on drafting processes around proceedings, financial eligibility and means, including loan repayment requirements. Consideration is also being given to the impact of the increase in applications on the staffing of our offices, provider availability and IT systems, in order to manage the expected increase in grants of legal aid and subsequent repayments.

A key issue for development over the next few months will be how the Agency consults with providers and staff on the policies and procedures to support the required changes, and how the Agency communicates those changes to its stakeholders. The Agency has employed Anna Smith from Research Write to develop consultation and communication strategies and plans. To assist this process, Anna has been interviewing a small number of providers, and representatives of the New Zealand Law Society and some local law societies, to gain insight into the communication needs of providers.

Update on global granting

As outlined in the November issue of LSA News, the Agency has commenced a consultation process for the global grant concept with a group of providers and the New Zealand Law Society. Global granting is part of the Agency's drive to streamline the granting process for standard family legal aid cases. It involves approving maximum grants up-front and paying claims using proforma invoices, and is expected to reduce providers' interactions with the Agency.

In general, the feedback received to date has confirmed that the global grant concept is worthy of further consideration, including testing. Therefore, the Agency is proceeding to a field test, and over the next few weeks will be approaching a wider group of providers to ask them to participate in this stage of the consultation

process. Prior to the start of the test, the Agency will be modifying and adding further specified services menu items for standard family cases to take into account feedback received to date.

Additional information on the global grant concept, including menus, service delivery descriptions and the processes that will be followed for the test will be available on the Agency's website (www.lsa.govt.nz) in the New Year. Consultation on global granting will be ongoing throughout the period of the test. Comments on the proposal are welcome and may be sent to info@lsa.govt.nz

The Agency has appointed Neroli Walkham to the position of test co-ordinator. Neroli will be responsible for all aspects of the testing, including providing training, advice and support to providers and Agency staff working on the test.

Management of legal aid grants

The Agency would like to inform you of some key staff changes in the management of granting legal aid.

Robyn Nicholas, in addition to her role as Manager Grants, has assumed the role of Project Director, in which she will be focussing on the developments arising from the Legal Services Amendment Bill (No 2) and the accompanying streamlining initiatives. In January 2006, Robyn will be joined by John Worden who has been appointed Project Manager. Many people will remember John from his earlier role with the Agency as Manager Service Contracts. John is returning to the Agency after a two-year sojourn with the New Zealand Defence Force. Kathleen Livingston, Senior Operations Adviser, is



also working on this project and has been temporarily replaced in Head Office by Fiona Clark.

*Standing (from left): Brian Dreadon, Sue England, Peter Stipkovits, Bernadette Doolan.
Sitting (from left): Andrew Harbidge, Fiona Clark, Graham Metcalfe.*

Peter Stipkovits has recently joined the Agency for a year in the role of Assistant Manager Grants. Peter has taken over the day-to-day management of the Grants business, with a focus on ensuring that the Grants function is running well in preparation for the major changes ahead. Peter is supported in Head Office by Fiona Clark (Senior Operations Adviser, covering for Kathleen Livingston) and Andrew Harbidge (Operations Adviser). The Regional Managers remain the same and are:

- **Sue England - Southern** (encompassing the Invercargill, Dunedin and Christchurch offices and all of the South Island)
- **Bernadette Doolan - Central** (encompassing the New Plymouth and Wellington offices which includes Court of Appeal (Criminal), Waitangi Tribunal and general Civil matters)
- **Brian Dreadon - Midland** (encompassing the Napier, Rotorua and Hamilton offices)
- **Graham Metcalfe - Northern** (encompassing the Whangarei, Auckland and Manukau offices, including legal aid for refugees)

Providers are reminded that if there is a problem with a legal aid decision, assignment, duty solicitor or PDLA matter, they should in the first instance discuss the matter with the Grants Officer responsible for the file. If dissatisfaction still occurs, providers should not hesitate to raise the matter with the appropriate Regional Manager.

LARP update

Of the 20 decisions made by the Legal Aid Review Panel in November 2005, 8 (40%) upheld the Agency decision, 4 (20%) reversed the Agency decision, 4 (20%) decisions directed the Agency to reconsider its decision, and 4 (20%) were for other reasons.

In November, 18 (90%) of the 20 decisions were requested by the legally aided person, and 2 (10%) by the provider. 10 (50%) decisions related to an Agency decision to decline a grant of aid, 9 (45%) decisions related the amount of legal aid granted, and 1 (5%) decision related to the withdrawal of aid.

Public Defence Service pilot (PDS) update

Since the opening of the Public Defence Service pilot (PDS) on 3 May 2004 to the period ended 25 November 2005, the PDS has undertaken a total of 3,643 cases in all four criminal proceedings categories. This figure represents 26% of all available assignments at the Auckland Court and 27% of all available assignments at the Manukau Court, the balance being taken up by private providers.

Total assignments to the PDS are comprised of 1,924 assignments in the Auckland Court and 1,719 in the Manukau

Court. Of these, 297 in the Auckland Court and 155 in the Manukau Court were PDS preferred lawyer assignments. Of the on rotation assignments to the PDS, a total of 1,627 were made in the Auckland Court and 1,564 in the Manukau Court.

In this time period, 44% of assignments in the Auckland Court and 53% of assignments in the Manukau Court were available on rotation.

Details regarding Auckland and Manukau Court assignment numbers and percentages can be found on the Agency website (www.lsa.govt.nz).