

From the Chief Executive 5th Anniversary



Tim Bannatyne

On 1 February 2006 the Agency was 5 years old. It is milestones such as this that give us pause to consider how far we have come and the path for the future.

We have undertaken considerable development work since 2001.

What is most important is the difference Agency staff, listed

providers and community law centres have made to the lives of New Zealanders. For instance, over the last 5 years:

- over one quarter of a million people have received legal services under the legal aid scheme to get help in dealing with their legal problem or situation. Obviously some of that number received help more than once.
- unrepresented defendants charged with an offence received over 320,000 hours of advice from duty solicitors
- over 70,000 people received advice and assistance when questioned or detained by the Police
- we have paid out approximately \$420m to lawyers who have worked to ensure access to justice for their clients
- community law centres have helped large numbers of people across New Zealand in dealing with the legal needs that affect their daily lives – we have been pleased to see community law centres expand in number and receive increases in funding
- LawAccess has helped deliver legal information gathered from 150 providers on 35 topic areas.

Developing the Agency over the last 5 years has been an interesting challenge. Most services to the public that we

contract for and fund are provided by people external to the Agency (apart from our in-house public defence service pilot and aspects of LawAccess). This by its very nature brings about a real interface between the Agency on the one hand, and the legal profession and community providers on the other. Over the past 5 years, when we count legal aid applications, assignments, amendments, correspondence and claims, this would be in the region of one and a half million interactions with the profession. We are in the process of becoming more efficient in our dealings with listed providers. We are also improving our policies and processes with community law centres.

We have quite some way to go. The prospect of major changes through the Legal Services Amendment Bill (No 2) brings with it significant opportunities for people to access justice through an enhanced legal aid scheme. It will also mean that the Agency will increase in size by nearly 50%. But alongside that, and passed the implementation of the Bill, we are still committed to ensuring access to good quality legal services for the public, as well as streamlined operational processes for those with whom we interact. It is Agency staff, listed providers and community law centres who will make this happen.

While the Agency has much to be proud of, I realise that there are concerns. Some are related to funding, or value of services. These are issues we will continue to work with.

The Agency is not the same place as it was 5 years ago. We plan to continue down the path of improved Agency services to promote access to justice. In the next 5 years we will see continued change. In the meantime, my thanks and those of the Board to all those we have worked with us to help people access justice.

Legal Services Amendment Bill (No2) Implementation

The Legal Services Amendment Bill (No 2) (the Bill) is making steady progress through the parliamentary process. The Justice and Electoral Select Committee has now heard submissions on the Bill, and the Ministry of Justice is preparing its report with their officials' advice on the submissions to the Committee.

Work is continuing on defining Agency policy, granting and debt management process changes associated with the new provisions contained in the Bill, and on assessing implications for the working relationship between the Agency and legal aid providers. Associated with this is the consideration of where we can make the administration of legal aid more streamlined. The Agency is also looking at the implications of the Transition Provisions in the Bill,

which will most likely require the Agency to administer both the 'old' and 'new' versions of the Legal Services Act until all the grants made and debts established under the Act as it currently stands are finalised/paid.

A communications and consultation strategy has been developed to ensure that all interested groups are well informed about the planned changes to the Agency's processes, and that effective consultation is carried out with providers on matters that impact upon them.

Property changes to accommodate the planned increase to Agency staff have been developed, and the Agency will shortly enter into negotiations to extend present accommodation arrangements or move into larger offices where appropriate.

Update on global granting

Field test commences

This month we reach a milestone, the commencement of the global grant field test. We informed you in the December edition of LSA News that the initial consultation on global granting had been completed, and that the Agency had decided to proceed to test the concept.

Testing for the global granting concept will run parallel to the current granting by steps process. A group of selected providers will submit a mock pro forma invoice to the Agency indicating the amount that would be claimed under the proposed global granting criteria. At the same time, providers will submit a genuine claim for aid following the current procedure. The selected providers will also return a questionnaire that, along with information gathered from grants officers, will be used to make any modifications to the global granting concept. This information will also assist the Agency in its decision whether to implement, abandon or further test the concept.

By the end of June 2006, the aim is to involve at least 500 grants of aid nationally in the test. To date, 18 firms from across the country have been selected and briefed on the test process. We expect to engage a further four firms by the end of February. The firms are from different parts of the country and range in size so as to gain a balanced coverage in the test results. To support these firms we have ten grants officers across seven offices skilled up on the global grant model, and have engaged Neroli Walkham as national test coordinator.

During the test, the objective is to monitor and measure whether:

- standard cases of family legal aid can be managed in the global grant menus
- the rules are clear and understandable as to what can be claimed and paid
- whether the total legal aid expenditure across all of the global grants remains the same as granting-by steps
- whether there is a reduction in administrative amendments and time required to process claims, creating administrative savings for both providers and the Agency.

Changes to the initial global grant concept

As a result of preliminary consultation with advisory groups back in December, changes were made to the initial global grant model and service delivery descriptions. The key changes are briefly described below.

Feedback indicated the amount for 'additional factors' was not likely to be adequate. We are seeking to address this by dividing the 'additional factors' item into three separate menu items.

We have also opened up the menu to allow claims for other kinds of disbursements that would reasonably be approved and set payment at the actual cost.

General Family menu

In the general family proceedings menu we have now allowed for different kinds of reports ordered by the Court. During consultation it was suggested that Child Youth and Family matters might not be appropriate to fund under global granting because cases are so varied and complex. This matter will be assessed during the test.

Relationship Property menu

Feedback indicates that this area of family law is most likely to sit outside of global granting - unless it is the type of straightforward case such as division of equity in a family home and car. We will monitor this throughout the test.

Preparation and hearing time

In the global grant model, only the Domestic Violence menu currently accommodates preparation and court hearing time separately. The Agency is also considering changes to the current Family Steps for mediation and settlement conferences to allow a claim for preparation and actual hearing time instead of a standard three hours at the guideline hourly rate. In the meantime we have left the global grant menu as it currently stands for mediation and settlement conferences in General Family. We will monitor this throughout the test.

For further information

Additional information on the global grant concept, including field test procedures and sample questionnaires will be available on the Agency's website (www.lsa.govt.nz) from March.

Comments on the proposal are welcome at any time throughout the life of the test and may be sent to info@lsa.govt.nz.

Community legal services – service development

With respect to community legal services, one of the Agency's goals is to ensure maximum coverage of services throughout the country. To achieve this, the Agency has been working with existing community law centres (CLCs) to extend coverage in geographic areas with limited or no services, and to specific communities of interest.

Current priority areas for service development are south Waikato, and services in the Auckland region for people with disabilities and refugee and migrant communities.

In relation to south Waikato, the Agency is working closely with the CLCs in the neighbouring regions to develop solutions appropriate to the communities concerned.

In collaboration with the Auckland area CLCs, and focussing on an integrated approach to service delivery, the Agency has sought to commission proposals addressing people with disabilities and migrant and refugee communities.

The Auckland University of Technology has been engaged to develop a service delivery model and implementation plan for addressing the unmet needs of people with disabilities. Focus groups with stakeholders (including the Auckland area CLCs and other service providers) are currently underway. Findings will be reported progressively, with the final report due in late April 2006.

Proposals for the migrant and refugee exercise are currently being considered.

Listed Provider Suspension Consideration and Review process

On 7 November 2005, the Agency formally implemented the Suspension Consideration and Review process.

When previously exercising its authority to suspend a listed provider's (provider) listing approval(s) under section 73 of the Legal Services Act 2000 (Act), the Agency operated under an interim suspension consideration and review process.

Principles of the process

The Suspension Consideration and Review process will be used by the Agency only as a last resort option when managing its providers of legal aid services. It is not envisaged that it will be a widely used Agency process.

The Agency will conduct the process in accordance with the principles of fairness, transparency, consistency and natural justice.

The provider shall be given the opportunity to be heard by the Agency, either through written submissions or in person, before any decision is made in respect to suspension consideration or review.

The Agency shall keep the provider fully informed of the Agency's decision making through all stages of the process, and shall provide copies of its written decisions to the provider.

Suspension Consideration

Where the Agency considers that one of the grounds for suspension outlined in section 73(1) of the Act may have been established, it will write to the provider advising them that the Agency is considering suspension of their listing approval(s). The provider will be advised of the ground(s) for suspension and the Agency's decision-making process. They will also be invited to provide submissions on the matter, which will be carefully considered before a decision is made.

If the Agency decides to suspend

If a provider's listing approval(s) are suspended, they will be informed through a formal written notice which complies with s73(3)-(5) of the Act. The effective date of suspension will not be held over pending the outcome of any review; however, the Agency will take into account a number of factors when determining the date of suspension. These may include:

- if the provider has any hearings in the immediate future and it would be impractical for new counsel to be briefed
- the impact of reassignment on the legal aid clients, and
- the impact of reassignment on the relevant Grants office(s).

If a provider's listing approval(s) have been suspended the relevant Grants office(s) will either reassign or assist with the reassignment of the provider's active files to another appropriately listed provider. The Agency's notification letter to affected legal aid clients will be of the nature that their lawyer is no longer able to provide legal aid services.

The right of review

Each provider has the right to request the Agency to review its decision to suspend. Where a request for review pursuant to s73(5) and (6) of the Act is received, the Agency will as soon as practicable convene a Suspension Review Panel (Panel).

The Panel will consist of at least two Agency senior managers and one external lawyer. No members of the Panel will have been involved in the suspension consideration process. The provider will be entitled to make oral submissions and be present at the review hearing, and they may also have legal representation.

The decision of the Panel shall be the Agency's final decision on the matter.

Other matters to note

If the Agency suspends all of a provider's listing approval(s) indefinitely, it may also terminate its contract for services with the provider in accordance with the relevant clauses.

The lifting of a suspension will depend on the nature and length of the suspension. However, where a provider's contract for services has been terminated they will be required to reapply to the Agency for their approval(s).

Where can you access the Suspension Consideration and Review Process?

The documented process is available on the Agency's website at www.lsa.govt.nz. The process will also form part of the Agency's Listed Provider Manual and will be provided to all manual holders in due course.

Public Defence Service Pilot (PDS) Update

Since the opening of the Public Defence Service Pilot (PDS) on 3 May 2004 until 25 November 2005, the PDS has undertaken a total of 3,643 cases in all four criminal proceedings categories. This 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.

The above 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 period, 44% of assignments in the Auckland Court and 53% of assignments in the Manukau Court were available on rotation.

Details regarding the assignment numbers and percentages can be found on the Agency website www.lsa.govt.nz.

National Survey

The Agency is preparing to undertake a survey of unmet legal need and access to services. The survey will be a random telephone survey conducted throughout New Zealand in May to July 2006. The survey objectives are to measure:

- the prevalence and types of legal problems,
- the levels of unmet legal needs, and
- access to legal services (State funded, free, self funded legal services) around the country.

Through the survey, the Agency expects to:

- identify the characteristics and locations of people using services and people with unmet legal needs
- identify the barriers to accessing legal information, advice and representation services
- better understand the reasons why some people do not access services and the outcomes of that inaction, and
- be able to design and deliver better services.

The Agency is interested in the ways that State-funded legal services could be made more accessible to those who most need them. The survey covers issues related to community legal services and legal aid, and all types of legal problems.

The questionnaire will assist respondents to identify (from prompt lists) problems or disputes they have encountered that have a legal aspect or remedy.

The survey is based on earlier research carried out by the Agency including a survey of unmet legal needs in the Wellington and Wairarapa regions last year. The survey also draws on recent research carried out in England and Wales, Canada and Holland. The Agency has established an advisory group to assist with methodological issues and to review the survey questionnaire. These have also been peer reviewed overseas.

The survey will be supplemented by a series of face-to-face interviews with people who could be underrepresented in a phone survey because they are the least likely to have a phone and the most likely to have unmet legal needs. Information from these face-to-face interviews will help ensure that key populations are represented in the findings.

A report of the findings will be published in November 2006, and a summary will be presented in LSA News.

Changes in the Public Advisory Committee



Peter Walker



Sue Dodds

Shae Ronald's term as Chair of the Public Advisory Committee (PAC) expires at the end of March 2006. Shae was a founding member of PAC and the Agency has been extremely fortunate to have her as Acting Chair, and then Chair, during the past two years. During this time, PAC has provided the Agency with advice on a range of issues including law-related education resources, remuneration for legal aid lawyers, funding of community law centres, initial criminal legal services and unmet legal needs for specific communities of interest.

Shae's contribution to PAC has been significant. She is highly valued in her role as Youth representative as well as for her expertise in mental health matters. As Chair, she has led PAC with vision, passion and drive. We thank Shae for everything she has given to the Agency and to PAC.

Agency Chief Executive Tim Bannatyne has appointed current PAC members Sue Dodds and Peter Walker to the position of Chair of the PAC (in a co-chair capacity) for a term of one year. This appointment will take effect from 1 April 2006. Both continue in their representative capacities on the Committee, Sue as the Women's representative and Peter as the representative of Community Law Centres.

Agency staff look forward to working with Sue and Peter in their new role.

LARP update

Of the 10 decisions made by the Legal Aid Review Panel in January 2006, 6 (60%) upheld the Agency decision, 1 (10%) modified the Agency decision, 1 (10%) reversed the Agency decision, and 2 (20%) directed the Agency to reconsider its decision.

In January 2006, all 10 (100%) decisions were requested by the legally aided person. 6 (60%) decisions related to an Agency decision to decline a grant of aid, 1 (10%) decision related to the amount of legal aid granted, 1 (10%) decision related to contributions or charges, 1 (10%) decision related to the withdrawal of aid, and 1 (10%) decision related to other reasons.

