

Care of Children Act implementation



The Care of Children Act 2004 came into force on 1 July 2005. The Act replaces the Guardianship Act 1968 and seeks to modernise the law about guardianship and care of children. The Act also makes significant amendments to the Family

Proceedings Act 1980 and the Status of Children Act 1969.

New legislative terminology has been introduced with the Care of Children Act:

- A custody order is now termed a *parenting order for day-to-day care*.
- An access order has been renamed a *contact order*.
- Matrimonial property is now called *relationship property*.

Proceedings Steps changes

The proceedings steps for Custody & Access (now Day-to-Day Care & Contact) and Family Proceedings/Guardianship have been amended to reflect the new legislation, and the Provider Manual and Agency website are being updated accordingly.

The changes to the maximum guideline rate (MGR) include:

- Increasing the MGR for Day-To-Day Care & Contact:
 - Step 1 'additional factors' from the current 2 hours @ guideline hourly rate (GHR) to 3 hours @ GHR
 - Step 2 'pre-hearing matters' from the current 4 hours @ GHR to 5 hours @ GHR.
- Increasing the MGR for Family Proceedings/Guardianship:
 - Step 1 'additional factors' – previously no provision for additional factors, now 3 hours @ GHR
 - Step 2 'pre-hearing matters' from the current 4 hours @ GHR to 5 hours @ GHR.

Transitional provisions

The transitional provisions in the Care Of Children Act apply to all matters that would have been dealt with under the Guardianship Act 1968 as of 1 July 2005. This means that the new steps will be applied to all matters that commence on or after that date.

This means that ***the current legislation and existing proceedings steps apply*** to:

- any original or amendment application received and decided before 1 July 2005
- any claim for services provided before 1 July 2005 where the claim is submitted after 1 July 2005
- any retrospective application for a grant or an amendment for work undertaken prior to 1 July 2005 received after 1 July 2005.

There will be a brief reference or explanation in letters to providers and clients, dated 1 July 2005 or later, as to why the matter for which aid is granted differs from the proceedings for which aid was originally granted or applied.

The new Act and the revised proceedings steps apply to:

- amendments received and decided after 1 July 2005 for matters granted prior to 1 July
- all original and amendment applications received and decided after 1 July 2005
- applications received before 1 July but not decided till after 1 July 2005
- a grant of legal aid or an amendment following a reconsideration or review undertaken after 1 July 2005, overturning the original decline decision made before 1 July 2005.

It is possible that a grant under the new steps may exceed the amount originally applied for. For example, an application for an amendment for Step 2 'pre-hearing' matters declined prior to 1 July 2005, will, if approved after 1 July 2005, result in a grant of 5 hours @ GHR rather than the current 4 hours @ GHR. If this situation exists, staff will make reference to it in the grant letter and increase the grant.

Maximum grants made under the current proceedings steps for matters continuing beyond the 1 July 2005 implementation date will continue to apply, until such time as an amendment is requested and approved. At that point, the new proceedings steps apply.

Snapshot analysis of provider supply, distribution and assignment

To improve understanding of whether the provider list adequately matches the needs of those seeking legal advice and representation, the Agency undertook an analysis of the supply, distribution and assignment to listed providers (under the legal aid scheme) during the 2003/04 year.

The Agency was also interested in developing a better understanding of patterns of provider supply and assignment and in establishing a base for tracking ongoing trends.

The results of this analysis are presented in a report: *An Analysis of the Supply, Distribution and Assignment to Legal Aid Providers in New Zealand 2003-2004*. The report records the supply and assignment (or take-up) to providers, broken down by law type, across 51 locations throughout New Zealand.

The report also compares the location of providers with that of legal aid recipients, and provides an analysis of the experience levels of providers within different locations and law types.

The intent of the report was to record provider supply and assignment to providers across different locations – rather than the implications of the findings for the Agency, legal aid recipients and providers. The analysis was based on information held by the Agency within its own records, and can be used as a platform against which to measure future trends and developments.

The Agency intends to prepare a similar snapshot analysis of the make-up of the provider list and compare this with the location of legal aid recipients for the 2004-2005 year.

The report is available on the Agency's website www.lsa.govt.nz.

Legal Services Amendment Bill update

Since the report in the May LSA News, in relation to the proposed legislation extending eligibility for legal aid, the Agency has been working on the implementation project.

The terms of reference for the implementation project have been completed, and work has begun on developing a comprehensive work plan to sit behind these.

The current areas of priority are to complete the work plan, progress the design of the grants process, look at IT changes

needed, and finalise the model on which the Agency will base staff numbers and provider coverage. There is also the development of a communications plan, through which the Agency will keep providers, as key stakeholders, informed of progress.

As part of designing the grants process, the Agency is looking at how it can incorporate streamlining concepts into the implementation, in order to make the granting of legal aid more efficient and effective.

Authorised Payments (top-ups)

Section 66 of the Legal Services Act 2000 directs that no listed provider 'may take payments from or in respect of a person to whom services are provided under any scheme unless the payments are authorised' by the Agency acting under the authority of the Act.

The Agency would like to remind providers that in its policy on top-ups, no distinction is made between the different types of additional payment (e.g. professional fees, disbursements, contingency fee), whether the provider asks for the payment or the client offers such a payment, or whether the payment is made directly to the provider or indirectly (such as paying for the provider's accommodation).

All such payments require authorisation by the Agency and each request will be considered on its own particular facts.

If a provider believes an additional payment is necessary, he or she is advised first to make an application to the Agency to increase the existing grant, giving detailed reasoning for this, before requesting an authorised payment under s66.

Agency policy on approving authorised payments particularly rests on considering whether or not the legally aided person will receive adequate legal representation, if a top-up is authorised because of some exceptional circumstance.

A copy of the Agency's policy is in the Provider Manual (section 5.5) and on the Agency's website (under the General Policies). If a provider is unsure about a payment received, he or she should ring the local legal aid office to discuss this.

Maximum grants in criminal cases

Providers will notice a minor change in wording in their letters advising that a grant of aid has been approved for criminal proceedings.

The letter will now make reference to the maximum grant 'fixed at the standard maximum rate for [client's case] in the Agency's published Proceedings Steps and is calculated with

reference to the proceedings category and your level of experience'.

This change of wording is to make it clearer how the maximum grant is set, depending on the path the case takes in the court. Providers should note that there is no actual or implied change to policy, procedure or remuneration levels with this amendment.

Work and Income letter revised

The revised letter to Work and Income seeking confirmation of benefit income has been revised as part of the Agency's streamlining project. The Agency revised the letter in order to reduce unnecessary delays for the provider, Work & Income and the Agency.

The new streamlined version is now available on the Agency's website (Other Forms) and all providers are encouraged to use this.

The main changes to this new 'confirmation of benefit letter' are:

Client identifiers

Work and Income have indicated that sometimes they have to return applications because insufficient identification information is provided. The revised letter allows for two client

identifiers - date of birth and Work & Income number - which should eliminate previous delays in this area.

Fax or mail confirmation

Work and Income only require the request by fax or mail (*not both*, which only adds time to the process and can cause delays). They will return the confirmation letter either by fax or mail depending on the preference of the provider, which can be indicated on the revised letter.

Client authorisation

Work & Income have also indicated that forms will not be accepted if the authorisation from the client is not sufficient or evident on applications received. The revised form has this section highlighted.

If you have any difficulties or questions regarding the new form, please contact your local Legal Services Agency office.

Public Defence Service pilot update

From the opening of the Public Defence Service pilot (PDS) on 3 May 2004 until 19 June 2005, the PDS has undertaken a total of 2,565 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 total above is comprised of 1,355 assignments in the Auckland Court and 1,210 in the Manukau Court. Of these, 194

in the Auckland Court and 94 in the Manukau Court were PDS preferred lawyer assignments.

Of the on-rotation assignments to the PDS, a total of 1,161 were in Auckland and 1,116 in Manukau. In this period, 44% of assignments in the Auckland Court and 54% 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.

Community law services to open soon

The two newly approved community legal services in Waitakere and Bay of Plenty are planning to open at the end of July. These are pilot services, and the Agency is supporting the centres in their establishment.

Both services will operate out of central locations: the Waitakere service in Henderson, and the Bay of Plenty Service in Tauranga and Whakatane.

LARP appointments / reappointments

The Legal Aid Review Panel (LARP) is established under section 62 of the Legal Services Act 2000 (Act). Members are appointed by the Attorney-General for a specified term of not more than 3 years.

Pursuant to section 62(2) of the Act, the Attorney-General has:

- appointed the following people to be members of LARP for a period of three years on and from 7 June 2005 -

Andrew Charles Beck, Barrister of Upper Hutt

Nicolette (Nick) Mary Darlow, Community Consultant of Wellington

Anet Kate, Mediator and Disputes Referee of Auckland

Alison Keiller MacDuff, Solicitor of Christchurch

Denis John O'Rourke, Company Director of Christchurch

Anjum Nausheen Rahman, Chartered Accountant of Hamilton

John Patrick Smith, Trainee Winemaker of Tauranga

Cordelia Mary Thomas, Law Lecturer of Lower Hutt

Anne Rosemarie Todd-Lambie, Lawyer of Nelson

J Elizabeth Toomey, Law Lecturer of Christchurch

Clive Norman Albert Trotman, University Lecturer and Arbitrator of Dunedin

- reappointed the following people to be members of LARP for a period of three years on and from 5 November 2005 -

Gregory William Calver, Barrister of Havelock North

Philippa Anne Cunningham, Barrister of Auckland

Paul Fitzharris ONZM, Retired Police Officer of Christchurch

Robert Maxwell Goldsbury, Barrister of Wanganui

Belinda Mary Greer, Legal Advisor of Wellington

Susan Jeanette Lane, Company Director of Hamilton

Ian Charles McAndrew, University Lecturer of Dunedin

Geoffrey Laurence Melvin, Barrister of Wellington

Patrick Martin Molloy, Barrister and Solicitor of Auckland

Elizabeth Dawn Patchett, Barrister of Palmerston North

John Gray Robertson, Barrister of Auckland

Dorothy Joan Rotherham, Solicitor of Timaru

Gail Susan Tanner, Mediator and Facilitator of Auckland

Ronda Tokona, Solicitor of Dunedin.

LARP Update

There were 45 decisions made by the Panel during May 2005. Of these 20 (44%) confirmed the Agency decision, 1 (2%) modified the Agency decision, 9 (20%) reversed the Agency decision, 12 (27%) directed the Agency to reconsider its decision and 3 (7%) had other outcomes (declining an extension of time to submit an application for a review or the Panel had no jurisdiction to review).

Of the LARP decisions made in May, 93% were on application from a legally aided person and 7% from a provider. 21 (47%) of the reviews related to an Agency decision to decline a grant, 19 (42%) related to Agency decisions on the amount of the grant, 3 (7%) related to an Agency decision on a contribution or charge, 2 (4%) related to an Agency decision to withdraw aid.

Appeals

The Rossiter case was an Agency appeal to the High Court (Legal Services Agency v Rossiter (13 May 2005) HC Christchurch, CIV 2004-409-002529, Fogarty J). The Panel had reversed an Agency decision not to increase the maximum grant to the

level requested and to require a full repayment of costs of services from proceeds of proceedings.

The first ground of appeal was that the Panel erred in law in holding that the Agency was unreasonable in paying only guideline rates. The Court held that both the Agency and the Panel made an error of law in thinking that the application had to be made under s24 of the Legal Services Act 2000, and the Agency was incorrect in deciding that it could not consider the amendment on its merits.

The Court held that the second ground of appeal that repayment was a statutory requirement under s32 was a correct statement except for the use of the wrong section of the Act, so this ground was not pursued further in the judgment.

On the third and fourth appeal grounds the Court held that the Agency had not properly considered hardship by considering the relative proportion of the sum being sought, but also that the Panel's reasons for reversing the Agency decision were inadequate. Nevertheless, the appeal was dismissed.

