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LSA Statement of Intent - the next three years

The Legal Services Agency's priorities for the next three years are identified in the recently tabled 2006-2009 Statement of Intent.

Chair of the Agency Board, Carole Durbin says implementing the Legal Services Amendment Act 2006 provides a major focus. The planning date for implementation is 1 March 2007.

"The changes go to the core of any legal aid scheme – financial eligibility, the merits of a person's case, and establishing repayments. Up to 40% more people will be able to access justice through public funding."

The Act also requires the Agency to review the remuneration rates of providers. Carole Durbin says, "We are aware of provider concerns. We will report to the Minister of Justice on how the rates could be reviewed which will help with a prompt review once the Act comes into force."

Agency Chief Executive, Tim Bannatyne says, "The SOI also reflects our current phase of major developments, with the Legal Aid, Duty Solicitor, and Police Detention Legal Assistance schemes all under review."

Many of the systems to support the new Act are being designed to help providers and the Agency. Tim Bannatyne says, "Streamlining applications, amendments, claims and debt processes are priority areas. We are also completing a survey of unmet legal need, and within the three year period of this Statement of Intent we will make a decision on the future of the Public Defence Service pilot."

Another push from the Agency is working to enable maximum access to community legal services. This includes strengthening service delivery throughout the Auckland area with an initial focus on meeting the needs of people with disabilities and new migrants.

Tim Bannatyne says "We particularly wish to encourage providers and community law centres to continue to work with us to build and develop operations and services that will more effectively help people access justice."

A copy of the Statement of Intent is available at www.lsa.govt.nz/general/documents.htm



Carole Durbin, Chair



Tim Bannatyne, CEO

Payment for waiting time - criminal

The Agency's Steps are designed to accommodate usual waiting time. The following, effective immediately, clarifies the Agency's policy for paying providers for waiting time in addition to the provision made in the Steps.

Waiting time for list and status hearings

Wherever possible, providers should determine the time when their matter will be called, and attend court in line with that advice. However, if a provider has been required by the court to wait an exceptionally long time through no fault of their own, the Agency will consider payment in addition to the Steps for this waiting time.

Providers will need to submit a summary of the circumstances surrounding their claim for waiting time. This summary must include confirmation that the provider:

- was unable to undertake any other work and the reasons for this
- asked to be excused by the Judge and that this was declined.

Given that there is an accommodation for waiting time in the Steps, the Agency will not pay in excess of the Steps for the first 30 minutes of any time spent waiting.

Other hearings

Outside List and Status hearings, the Agency will remunerate actual waiting time where providers are required to be in court at a specified time, and through no fault of their own, are required to wait at court beyond that time.

Providers will need to submit a summary of the circumstances surrounding a claim for waiting time as outlined above.

Provider Coverage 2004/05

The Agency's Analysis of the Supply, Distribution and Assignment to Legal Aid Providers in New Zealand 2004/05 has been released.

A copy is on the Agency's website at www.lsa.govt.nz with a quick link from the Listed Provider section.

The purpose of the report is to analyse the availability of legal aid providers, rather than issues of access to legal aid services or whether the supply is adequate in a given location.

In comparison with the previous year's report, some of the key statistics to emerge from the 2004/05 analysis include:

- o For criminal legal aid, which is the largest category by grants, there was a decrease in the number of grants, an increase in the number of listed providers, and a larger increase in the number of lead providers (actively undertaking legal aid work)
- o For family legal aid, there was a decrease in the number of grants, listed providers and lead providers
- o For civil-general legal aid, there was an increase in the number of grants with a decrease in the number of listed and lead providers
- o Across the board, there has been a slight increase in the number of firms with listed providers.

Implementing the 2006 Amendment Act

The Agency has started consultation with the New Zealand Law Society on policies related to the Legal Services Amendment Act 2006. Consultation will continue through July with the society's Legal Services Committee. The policies are:

- i) Eligibility - criminal and civil eligibility policies
- ii) Debt - interest, repayment, write off, and interim repayment policies
- iii) Other - transition policy, and private mediation policy.

A presentation was given to the Law Society on the key features of the legislation and changes that will impact on the aided person and provider. The NZLS has a copy of the presentation to support communications with its membership.

Provider training

Agency staff are working with the New Zealand Law Society's Continuing Legal Education team about how to prepare providers for the implementation of the amendment act. Seminars are planned for February and March 2007.

At the moment, the work is focussed on developing the education and training needs and identifying material to support that.

Timing and venue details will be confirmed through the usual NZLS mailouts.

Provider Manuals

Work is underway to develop new provider manuals by the end of the year. The aim is to have a manual that contains more of the procedural guidance used by Grants staff.

Ultimately, it should make the decision making process more transparent and be helpful to providers in managing the legal aid process.

Grants and Debt – a new face for LSA

The Post-Amendment Act environment next year will mean more people are eligible for legal aid and more people will have to repay some or all of their legal aid. Clear definitions about the roles of Grants and Debt will be crucial to a smooth functioning system.

Grants staff will have responsibility for:

- Establishing and negotiating the initial debt, including any reconsiderations

- Deciding to withdraw aid if the legally aided person is in default, taking into account the views of Debt staff
- Establishing the final debt once proceedings have been finalised

The Debt team will have responsibility for:

- Monitoring and managing repayments after Grants have established the initial debt
- Renegotiating repayment plans
- Managing defaults on repayments, including interest
- Establishment of the final repayment plan when the grant is closed

We are also reviewing the way we set up and manage securities and are looking at whether the Agency can take responsibility for this and whether it can be centralised within the Debt team.

Global Granting update – Neroli Walkham

A full report on the Global Grant field test will be available in July, but we are looking at extending the test until the end of the year. It is likely to be early July before we reach 500 case files in the test, but many cases will not have been finalised. This means we will not be able to draw definitive conclusions about the effectiveness of the system.

This is the first time the Agency has field-tested a new granting system, and the aim is to standardise and pre-approve payment for certain types of cases. One provider taking part in the trial says, "It's good to be able to have input in how the legal aid system can be improved. While there are a few little teething problems this process is really simple once you've got the grant. It makes the management of a client's file smoother because we're not having to stop work to write a letter explaining what we're doing to seek an amendment – we can just get on with the work." The provider perspective is important, and the ultimate result we're hoping for is a system that requires less administration for providers and the Agency.

Other providers' feedback has been generally supportive, and includes comments that:

- the majority of cases can be managed under global granting without the need for an amendment
- fees are in line with current legal aid remuneration (noting concerns about current rates)
- pro forma invoicing makes claiming easier

Legal Aid for LARP Reviews

The Agency has finalised its policy on legal aid for LARP reviews. This policy is effective immediately and replaces the interim policy released in November 2005.

Where aid is granted for the review, providers will be remunerated at a flat rate of \$200. The flat rate is considered appropriate, as the supporting information being presented to LARP should have already been presented to the Agency in seeking the grant. The flat rate may be exceeded on application 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 this 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 for the review under section 9 of the Legal Services Act 2000, for example under s 9(3) and 9(4)(d)(iii).

Legal Aid for Parole Board hearings

The Agency has clarified legal aid eligibility for Parole Board matters, and from Monday 26 June, only Parole Board hearings specified in section 6 of the Legal Services Act 2000 will be approved.

Section 6 hearings for which criminal legal aid is available include a postponement order, recall (breach of parole) and non release order. Criminal legal aid is also available for some parole matters heard in the High Court or the Court of Appeal under the Parole Act 2002.

The Agency may in the past have granted aid for some matters outside the s6 hearings. We have written to all legal aid lawyers

whose clients have been granted aid for parole board matters over the past year to inform them of the situation and to clarify the policy.

Applications received before Monday 26 June will be considered and grants already approved will be honoured. If you require any clarification please contact Frances Blyth or Andrew Harbidge at the Agency on (04) 4955 910.

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Law-related education kits

Accident Compensation

The Agency has been working with the Accident Compensation Corporation and community law centres to develop the content for a kit on accident compensation law.

The ACC kit is designed especially for trainers; people who will deliver information on accident compensation law to others. For example, a typical session might be run by a community law centre for law centre workers and volunteers, for CAB workers, or for advocates for ACC claimants. The kit can, however, also be easily adapted for sessions attended by the general public.

This kit contains the key information about cover, entitlements, the claims process, the ACC Claimants' Code of Rights, and the opportunities available for challenging ACC decisions. In addition to this, the kit includes practical guidance for ACC advocates to help them understand the ACC system, and, in particular, to understand how to advocate for and to represent their client most effectively when challenging ACC decisions.

Given the time needed to present all of these topics (over 12 hours of session time), it is expected that facilitators would select from the topics and materials to suit the needs of their specific group and the time available.

The Agency will begin distribution of the resource in October.

The kit is the fifth in an on-going series, which also includes:

- Enduring Power of Attorney
- Legal Aid and other legal assistance
- Domestic Violence and Harassment Acts
- Immigration

For more information on any of the kits contact Janine McIntosh: (04) 495 5940
janine.mcintosh@lsa.govt.nz

Immigration Law

The Agency's law-related education kit on Immigration Law is now being administered by Auckland Regional Migrant Services (ARMS).

This training kit is designed for people who will be presenting legal information about immigration issues. It covers visas, temporary permits, residence, unlawful status and removal from NZ, deportation and refugees. The kit costs \$78.75 (inc GST).

Order from Lucy Luo, Distribution Co-ordinator, Auckland Regional Migrant Services (ARMS). Ph: (09) 625 2440 ext 752 or email: lucyl@arms-mrc.org.nz

New form: confirmation of benefit

The confirmation of benefit form used by providers to obtain benefit information for the Agency is about to change, and will be simpler to fill out.

The Agency worked with the Ministry for Social Development to simplify the form while still providing the information required. The main difference you will see, will be that there is only a total benefit income amount to fill in, rather than itemising the dollar amount for each benefit over the 12 month period.

Initial Criminal Legal Services

Police Detention Legal Assistance (PDLA) Scheme Improvement Project

The Agency's Board has agreed that new arrangements be developed for testing an improved PDLA scheme.

The conclusion from the recent analysis phase of the project is that without substantial change the scheme cannot be significantly improved. The proposed changes are intended to enhance access to services under the scheme, particularly relating to the availability of providers and the ease of contact between the legally aided person and the service provider.

The new arrangements that are being developed for possible testing include:

- creating two distinct services under the scheme:
 - a telephone/ attendance service for more serious cases, or where other exceptional circumstances exist, when a lawyer may on occasions be required to attend at a Police Station, and
 - a telephone – only service for less serious cases where legal assistance or advice is straightforward
- establishing a dedicated telephone line or lines for contact with the scheme, so that Police and the person being detained or questioned do not have to locate an available lawyer
- operating a preferred lawyer for the telephone/ attendance service, otherwise allocating to the next eligible provider
- exploring the extent to which
 - on-going legal representation can be established in suitable cases, and
 - early engagement can provide benefits for the criminal justice system more generally

The Agency will also work with the legal profession to consider training and to develop guidelines for personal attendance, that address some identified inconsistencies in practice. In addition, the Agency is working with Police to consider issues related to the level of 'take up' of the scheme.

Once the Agency has developed its proposals further, it will consult with the profession, particularly in the localities where tests may be undertaken. As part of the development process, the Agency will also seek input from PDLA providers.

New Office

The Agency is planning to open a new office at Waitakere, in Alderman Drive in August 2006. It is less than 5 minutes walk to the Waitakere District Court.

There are two key reasons for opening the new office. The first is to better service the criminal court, and the other is to widen the recruitment of Auckland staff into new areas.

Community Law Centres

The Agency recently completed its annual funding round for community law centres (CLCs). The Agency has contracts with 27 CLCs in New Zealand for the provision of community legal services to communities with unmet legal needs, and in particular to people with insufficient means to pay for legal services. Funding for CLCs is received from the New Zealand Law Society Special Fund as well as government appropriation and interest on amounts held in reserve.

CLCs provide a range of legal services, which may include 'casework' (legal advice, assistance and representation) as well as legal information, law-related education, and law reform. Each year CLCs put forward a proposal to the Agency indicating the services they propose to provide over the coming year, including the continuation of existing services and new initiatives.

From the proposals received, approximately 112,000 hours of advice, assistance and representation are planned for 2006/07 and an additional 22,000 hours will be provided by volunteers. It has been projected that some 55,000 people seek access to the services offered.

For 2006/07 allocations for core funding and other support to CLCs to the value of \$8.77 million have been made. This represents an increase of more than 12% from that paid out in the previous financial year. The Agency continues to work with individual CLCs on other service development plans, including extension of services to areas that do not currently have reasonable access to community legal services. These plans have the potential to increase the overall funding for community legal services to \$9.59 million in 2006/07 or 17.6% more than that committed in the year ending 30 June 2006.