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## Foreword

The Agency has developed new criteria for the approval of practitioners to be listed to provide legal services under its Legal Aid, Duty Solicitor and Police Detention Legal Assistance Schemes. The criteria require the applicant to demonstrate competence to take responsibility for the completion of a legal aid matter. Specific minimum criteria in demonstrating this competence are listed.

It is recognised that over time these criteria will continue to evolve and will require further development as the needs of the Agency, the profession and the aided person undergo change.

The criteria for approval as a Listed Provider will be supported by a set of service standards. These will clearly set out the service quality standards acceptable to the Agency. It is expected that these will be introduced in the second quarter of 2003.

The Agency is confident that its role and the role of the Listed Providers in providing service to the aided person will be enhanced by the adoption of the new listing criteria and service standards and looks forward to their implementation.

In presenting this, the first edition of the Legal Services Agency Criteria for Approval as a Listed Provider, the Agency wishes to thank those members of the legal profession and the many other people and organisations that have assisted in bringing the quality framework to its present form.

In particular, to thank members of the project Steering and Working groups, the representatives of the New Zealand Law Society, the District Law Societies and Te Hunga Roia Maori o Aotearoa who have contributed their observations and recommendations.

It is through such willing co-operation that the Agency can attain its goal that aided persons can have confidence in all practitioners listed as Legal Aid providers.

T J Bannatyne  
Chief Executive

# Criteria for Approval as a Listed Provider

pursuant to section 71 of the Legal Services Act 2000

## Legal Aid Schemes

The Legal Services Agency is tasked under the Legal Services Act 2000 to promote access to justice by providing legal aid schemes that assist people who have insufficient means to pay for legal services to nonetheless have access to them.

Legal services in relation to Legal Aid are defined in the Act as:

“legal advice and representation and includes assistance:

- i. with resolving disputes other than by legal proceedings; and
- ii. with taking steps preliminary or incidental to any proceedings; and
- iii. in arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings.”

Legal services are further defined by the Agency as follows:

- Legal aid is granted only where the assistance required is related to proceedings, so assistance as defined here fits within an approved scheme only in terms of (ii) and (iii) above
- Advice simplicitor is similarly not covered by the Legal Aid Scheme except in (ii) above and (iii) above
- Advice and assistance on representation under the Duty Solicitor Scheme and advice on rights under the Bill of Rights with respect to duties and obligations under the Police Detention Legal Assistance Scheme are provided for within those schemes
- Legal representation in Courts must be by a practitioner holding a current practising certificate (apart from proceedings under the Employment Relations Authority, ACC or the Environment Court).

Three schemes are currently administered under the Legal Services Act 2000. These schemes are:

1. The Legal Aid Scheme; to assist persons with insufficient means, to have access to legal representation and advice in anticipation of proceedings.
2. The Duty Solicitor Scheme; to ensure that there is available in each District Court a sufficient number of lawyers for the purpose of assisting, advising and representing unrepresented defendants charged with an offence.
3. The Police Detention Legal Assistance Scheme; to ensure that there are available a sufficient number of lawyers to provide legal advice, or legal assistance, or both to any person - to whom the scheme applies; and who wishes to consult or instruct a lawyer about any matter relating to the person's questioning and/or detention.

## Listing Approval

Approvals for Listed Providers will be classified into the following areas of law:

Legal Aid:

- Criminal (further divided into Proceedings Categories)
- Family
- Civil - General
- Refugee
- Waitangi Tribunal and Maori Land and Maori Appellate Courts
- Mental Health
- Duty Solicitor
- Police Detention Legal Assistance

The Agency has established listing criteria, for each area of law that requires the demonstration of experience and competence before listing can be approved. Input from referees and the totality of the applicant's representation of the quality and relevance of his/her experience and competence will be taken into account.

Law practitioners will apply to the Agency for approval to be listed to provide legal aid services. The application with attached supporting documentation must provide sufficient information to allow the Agency to ascertain the qualifications, experience and competence of the applicant to act as Lead Provider. Where special circumstances exist, the Agency may give full or conditional approval where the applicant does not meet all of the criteria.

All Listed Providers for Duty Solicitor and Police Detention Legal Assistance Schemes will be Lead Providers. The Agency may approve applicants under the Legal Aid Scheme as either Lead or Secondary Providers. Within each area of law:

- A Lead Provider is a Provider who has an approval that does not require supervision from another Listed Provider and who has overall responsibility for the management and conduct of the legal aid case including the substantive hearing. A Lead Provider may, in certain circumstances, have a conditional approval.
- A Secondary Provider will have insufficient experience and/or competence to be approved as a Lead Provider but may be listed as a provider subject to meeting a condition that she/he is supervised by and is responsible to a Lead Provider managing the legal aid matter.

# Criteria for Approval as a Listed Provider

pursuant to section 71 of the Legal Services Act 2000

## Legal Aid

The Criminal Proceedings Categories, One to Four, relate to the experience and competence of the Listed Provider. This is to ensure that assignments are allocated to suitably experienced practitioners according to the complexity of the proceedings and the severity of the possible outcome for the aided person.

Legal Aid is further defined for listing into: Family, Civil-General, Refugee, Waitangi Tribunal and Maori Land and Maori Appellate Courts, and Mental Health. The applicant may make application for approval in any of those areas where she/he has met the general listing criteria.

These separate listings have been developed to ensure that the Agency's Listed Providers have the requisite specialist knowledge, experience and competence.

## Agency Discretion on Mandatory Training

Where the applicant has not completed a mandatory training requirement because of limited programme availability the Agency may issue an approval conditional on the training being successfully completed by a nominated date.

## Court of Appeal

Listed Provider may undertake work in the Court of Appeal in the areas of law for which she/he has full approval.

## Agency Approval

In determining whether applicants meet the relevant listing criteria, the Agency may take advice from local consultative groups established for this purpose, or from any other appropriate professional body.

The Agency may list at its discretion, law practitioners as Lead Providers who do not fully meet the approval criteria in this document, where the applicant can demonstrate appropriate ability, equivalent experience and competence.

## Conditional Listing Approval

Where the applicants do not meet the experience and competence criteria, the Agency may impose conditions on an approval to provide legal aid services. In this case, the Listed Provider must provide the services in accordance with those conditions, for the period that the listing approval specifies.

Where the conditions of an approval have been met, the Listed Provider may apply for full approval using the Agency application form and supplying the appropriate documentation.

## Contract for Services

Listed Providers must hold a current contract for services with the Agency in order to provide services under its legal aid schemes.

Legal Services will be provided under the terms of a contract for services between the Agency and the Listed Provider. A set of service standards will be referenced in the contract.

However if Listed Providers are subsequently employed by the Agency in its Public Defence Service pilot they must enter into a current "Agreement for Listed Provider Employed by the Legal Services Agency" for the provision of services under the Agency's legal aid scheme.

Similarly, if lawyers who are not listed providers are employed by the Agency in its Public Defence Service Pilot, they must also enter into a current "Agreement for Listed Provider Employed by the Legal Services Agency" for the provision of services under the Agency's Legal Aid Schemes.

## Standards of Service

Listed Providers are expected to provide a standard of service that meets the Agency's requirements as defined in its published service standards.

## Reporting of Complaints

In order to maintain the integrity and credibility of the Legal Aid Schemes, Listed Providers must advise the Agency of any upheld complaint made against them that may affect her/his standing as a Listed Provider and the interests of the aided person.

## Reporting of Criminal Convictions

Listed Providers must advise the Agency, without delay, of a conviction for any offence against the law (apart from minor traffic convictions) received after listing.

## Transition

Where approval categories and areas of law remain unchanged Listed Providers currently contacted, will be transferred to the new provider list in March 2003. These providers will need to maintain competencies and continue to meet service standards to retain the approval for these categories and areas of law.

## Non-lawyer providers

The listing criteria and service standards for non-lawyer providers will be advised separately.

# Criteria for Approval as a Listed Provider

pursuant to section 71 of the Legal Services Act 2000

## General Listing Criteria

1. Applicant lawyers wishing to be listed as a provider of legal services under the Legal Aid, Duty Solicitor and/or Police Detention Legal Assistance Schemes must hold a current practising certificate issued by a District Law Society
2. Applicant lawyers will not have had their practising certificate suspended, nor have been struck off, nor declared bankrupt at any time over the previous five years. (The Agency may waive this criterion where it judges the circumstances documented will not impact on the practitioner's fitness to practise as a legal aid provider).
3. Applicant lawyers will not have had a criminal conviction where the nature of that conviction might adversely affect the relationship with aided persons, or the integrity and credibility of the legal aid schemes.
4. Applicant lawyers will have no history of upheld complaints sufficient in aggregate to either be a risk to the integrity of the Agency's Schemes or contravene the Agency's Service Standards.

## Listing Criteria - Criminal Proceedings - Category One relates to:

- proceedings in a District Court or the High Court (other than a jury trial or preliminary hearing of an offence)
- proceedings transferred to a Youth Court (other than the preliminary hearing of an offence)

### Lead Providers

The Agency requires that the applicant demonstrate through a statement of the quality and relevance of her/his recent work experience, that she/he is competent to take responsibility for a Criminal, Proceedings Category One matter as a Lead Provider.

Within this statement of experience and competence, applicants must demonstrate that the following elements have been met or exceeded:

- a minimum of 12 months' post admission criminal law experience
- appearance as counsel with substantive and active involvement in at least three defended hearings
- completion of the New Zealand Law Society Introduction to Criminal Law Practice
- completion of the New Zealand Law Society Duty Solicitor Training Programme

### Secondary Providers

Applicants will meet the general listing criteria.

Applicants who do not yet meet the experience and competence criteria may be listed as Secondary Providers and receive conditional approval.

## Listing Criteria - Criminal Proceedings - Category Two relates to:

- trials or indictment before a jury or before a Judge alone, following an application under Section 361B of the Crimes Act 1961 (including the preliminary hearing of the offence) where the most serious charge carries a maximum penalty of not more than ten years imprisonment
- proceedings before, and appeals to, the New Zealand Parole Board

### Lead Providers

The Agency requires that the applicant demonstrate through a statement of the quality and relevance of her/his recent work experience, that she/he is competent to take responsibility for a Criminal, Proceedings Category Two matter as a Lead Provider.

Within this statement of experience and competence, applicants must demonstrate that the following elements have been met or exceeded:

- a minimum of 24 months' continuous experience as Criminal, Proceedings Category One
- appearance as counsel with substantive and active involvement in at least three Proceedings Category 2 or above trials
- completion of the New Zealand Law Society Court Jury Trials Workshop.

# Criteria for Approval as a Listed Provider

pursuant to section 71 of the Legal Services Act 2000

## Listing Criteria - Criminal Proceedings - Category Three relates to:

- trials or indictment before a jury or before a Judge alone, following an application under Section 361B of the Crimes Act 1961 (including the preliminary hearing of an offence) where the most serious charge carries a maximum penalty of more than ten years' imprisonment (other than life imprisonment or where the aided person if convicted is liable to preventative detention) or where the aided person is likely to face cumulative sentences of more than 10 years imprisonment. (The matter becomes a Proceedings Category Four at that stage).

### Lead Providers

The Agency required that the applicant demonstrate through a statement of the quality and relevance of her/his recent work experience, that she/he is competent to take responsibility for a Criminal, Proceedings Category Three matter as a Lead Provider.

Within this statement of experience and competence, applicants must demonstrate that the following elements have been met or exceeded:

- a minimum of 24 months' continuous experience as Criminal, Proceedings Category Two
- appearance as counsel with a substantive and active involvement in at least three Proceedings Category Three or
- four trials where participation in such trials is available to the practitioner<sup>3</sup>
- completion of the New Zealand Law Society Litigation Skills Programme.

## Listing Criteria - Criminal Proceedings - Category Four relates to:

- trials or indictment before a jury or before a Judge alone, (including the preliminary hearing of an offence) where any charge carries a maximum penalty of life imprisonment or where the aided person, if convicted, is liable to face a sentence of preventive detention.

### Lead Providers

The Agency requires that the applicant demonstrate through a statement of the quality and relevance of her/his recent work experience, that she/he is competent to take responsibility for a Criminal, Proceedings Category Four matter as a Lead Provider.

Within this statement of experience and competence, applicants must demonstrate that the following elements have been met or exceeded:

- a minimum of 24 months' continuous experience as Criminal, Proceedings Category Three
- appearance as counsel for the defence with a substantive and active involvement in at least six Proceedings Category Three or Four trials.

## Duty Solicitor

- Duty Solicitors under section 47 of the Legal Services Act 2000 are approved to assist, advise and under some circumstances represent, unrepresented defendants at Court who are charged with an offence.
- When Listed Providers meet the criteria of the Duty Solicitor Scheme their names may be added to the roster of Duty Solicitors in the relevant District Court, according to the Agency protocols.

### Lead Providers

Applicants will meet the general listing criteria and in addition will have completed the New Zealand Law Society Law Society Duty Solicitor Training Programme.

## Police Detention Legal Assistance Scheme

- Police Detention legal Assistance Scheme provides assistance, through telephone or face-to-face, legal advice to persons being questioned or detained by the Police.
- When Listed Providers meet the criteria of the Police Detention Legal Assistance Scheme their names may be added to the static list or roster in the relevant District, according to the Agency protocols.

### Lead Providers

Applicants will meet the general listing criteria and in addition will have a Criminal, Proceedings Category Two Listed Provider approval.

# Criteria for Approval as a Listed Provider

pursuant to section 71 of the Legal Services Act 2000

## Civil Listing Criteria relates to:

- civil proceedings under s7 (1) (a), (b), (c), (e)(iii), (e)(iv), (e)(v), (g), (h), (i), (n), and (o) of the Legal Services Act 2000.

### Lead Providers

The Agency required that the applicant demonstrate through a statement of the quality and relevance of her/his recent work experience, that she/he is competent to take responsibility for a Civil - General matter as a Lead Provider.

Within this statement of experience and competence, applicants must demonstrate that the following elements have been met or exceeded:

- a minimum of 12 months' post admission legal experience in Civil matters
- attendance at, or observation of, five Civil or Family proceedings with witnesses giving oral evidence, and
- assistance in the preparation of at least five Civil matters
- completion of the New Zealand Law Society Entry Level Programme, Civil Litigation Skills Workshop
- appearance as counsel in at least three Civil proceedings.

### Secondary Providers

Applicants will meet the general listing criteria.

Applicants who do not yet meet the experience and competence criteria may be listed as Secondary Providers and receive conditional approval.

## Family Listing Criteria relates to:

- Family proceedings in a Family Court, High Court or Court of Appeal under s7(1) (a), (b) and (c) of the Legal Services Act 2000.

### Lead Providers

The Agency requires that the applicant demonstrate through a statement of the quality and relevance of her/his recent work experience, that she/he is competent to take responsibility for a Family matter as a Lead Provider.

Within this statement of experience and competence, applicants must demonstrate that the following elements have been met or exceeded:

- a minimum of 12 months' post admission legal experience in Family matters
- substantive and active involvement in a wide range of Family Court proceedings, including interlocutory hearings, mediation conferences and judicial conferences
- active participation in three proceedings with witnesses giving oral evidence
- completion of the New Zealand Law Society Entry Level Programme, Introduction to Family Law Practice.

### Secondary Providers

Applicants will meet the general listing criteria.

Applicants who do not yet meet the experience and competence criteria may be listed as Secondary Providers and receive conditional approval.

<sup>3</sup> In districts where access to Proceedings Category Three or Four trials is very limited the local consultative group will make its recommendations based on the applicants range and depth of experience and competence in proceedings Category Two trials.

## Mental Health Listing Criteria relates to:

- civil proceedings under s7 (1) (a), (b), and (c) of the legal Services Act 2000.

### Lead Providers

The Agency requires that the applicant demonstrate through a statement of the quality and relevance of her/his recent work experience, that she/he is competent to take responsibility for a Mental Health matter as a Lead Provider.

Within this statement of experience and competence, applicants must demonstrate that the following elements have been met or exceeded:

- a minimum of 24 months' post admission experience in Family Law
- observation of at least three completed Mental Health proceedings.

# Criteria for Approval as a Listed Provider

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## Secondary Providers

Applicants will meet the general listing criteria.

Applicants who do not yet meet the experience and competence criteria may be listed as Secondary Providers and receive conditional approval.

## Refugee Listing Criteria relates to:

- proceedings under s7 (1), (j), (k), (l), and (m) of the Legal Services Act 2000.

## Lead Providers

The Agency requires that the applicant demonstrate through a statement of the quality and relevance of her/his recent work experience, that she/he is competent to take responsibility for a Criminal, Refugee matter as a Lead Provider.

Within this statement of experience and competence, applicants must demonstrate that the following elements have been met or exceeded:

- a minimum of 12 months' post admission legal experience in Refugee matters
- participation in and completion of significant preparation in at least five cases at the Refugee Status Branch level
- representation of clients in at least three Refugee Status Appeals Authority proceedings.

## Secondary Providers

Applicants will meet the general listing criteria.

Applicants who do not yet meet the experience and competence criteria may be listed as Secondary Providers and receive conditional approval.

## Supreme Court Listing Criteria (Interim)

Relate to appeal proceedings in the Supreme Court in accordance with the Supreme Court Act 2003 including:

- Criminal proceedings under section 6 (a) of the Legal Services Act 2000
- Civil proceedings under Section 7 (1) (b) of the Legal Services Act 2000
- Appeals under section 60 of the Legal Services Act 2000.

## Lead Providers

Applicants must:

- only represent matters for which they hold a current listing approval
- hold litigation level 2 or above (i.e. have four years or more litigation experience)

## Waitangi Tribunal and Maori Land and Maori Appellate Courts Criteria relate to:

- proceedings under s7 (1) (e)(i), (e)(ii), and (f) of the Legal Services Act 2000.

## Lead Providers

The Agency requires that the applicant demonstrate through a statement of the quality and relevance of her/his recent work experience, that she/he is competent to take responsibility for a Waitangi Tribunal and Maori Land and Maori Appellate Courts matter as a Lead Provider.

Within this statement of experience and competence, applicants must demonstrate that the following elements have been met or exceeded:

- a minimum of 24 months' post admission legal experience
- evidence that they have studied the Treaty of Waitangi, Waitangi Tribunal jurisprudence and Maori Land Law
- an understanding of tikanga Maori and basic ability in te reo Maori when working in the Waitangi judicial jurisprudence
- engagement on the preparation of submissions for three relevant Court or Tribunal proceedings
- completion of the New Zealand Law Society Civil Litigation Skills or New Zealand Litigation Skills programmes.

## Secondary Providers

Applicants will meet the general listing criteria.

Applicants who do not yet meet the experience and competence criteria may be listed as Secondary Providers and receive conditional approval.

# Criteria for Approval as a Listed Provider

pursuant to section 71 of the Legal Services Act 2000

## Approval as a Listed Provider

All applications for listing approval must be made directly to the Legal Services Agency.

The Agency has established Local Consultative Groups to assess for approval, the information provided by the Applicant. Group members, including those nominated by the relevant District Law Society, will have an understanding of the experience and competence required for each area of law.

The Group will assess the information provided by the applicant to ascertain the applicant's experience and competence in relation to the area of law for which they applied. A recommendation concerning the approval will be made to the Agency. The final decision will be made by the Agency.

The information, to be provided by the applicant, will include inter alia:

- general curriculum vitae.
- 2 completed reference forms attesting to the applicant's competence in the area/s of law applied for. These referees will be independent law practitioners, experienced and competent in the field for which the applicant has applied and whom the Agency or the Local Consultative Group may contact, if required.
- statement of experience and competence against criteria including:
  - compliance with specific criteria
  - length of time in practice
  - details of proceedings/hearings/etc the applicant has been involved with in the past months (number relevant to the specific area of law applied for) including - the number, the complexity, the nature and the extent of involvement
  - recent experience in relevant related fields
  - confirmation of attendance at mandatory training programmes
  - details of continuing law education seminars, workshop or programmes or other applicable education or experience in a related field
  - the history of upheld complaints (if any)
  - any further information that may demonstrate the experience and competence of the applicant.

Where applicants seek listing outside of the criteria, the exceptional circumstances are to be detailed in the application documentation and referees must be able to attest to the applicant's experience and competence to be listed outside the guidelines

# Criteria for Approval as a Listed Provider

pursuant to section 71 of the Legal Services Act 2000

## GLOSSARY OF TERMS USED IN THE CRITERIA FOR APPROVAL pursuant to section 71 of the Legal Services Act 2000

The Agency requires that the applicant demonstrate through a statement of the quality and relevance of his/her recent work experience, that she/he is competent to take responsibility for an [area of law] matter as a Lead Provider.

Most listings require that the applicants demonstrate that specific elements have been met or exceeded. In general terms these can include:

- [an amount of time] post admission legal experience (which can include experience in a specific area of law)
- assistance in the preparation of [amount] of [area of law] matters
- appearance as counsel with substantive and active involvement in [amount] of defended hearings or trials
- continuous experience at a particular level
- active participation in [amount] of proceedings with witnesses giving oral evidence
- participation in and completion of significant preparation in at least [amount] of cases in [area of law]

The above terms in bold require definition. When applications for listing are assessed for approval, the following interpretations are generally applied:

- **Demonstrate** - to address the specific requirements of the criteria, in writing, with sufficient detail of specific matters to show that the level of skill and experience has been met and means by which that the information can be verified (e.g. case of court numbers, summary of case, assisting or opposing counsel, etc). This may include comments from third parties in the form of references of other documentation.
- **Quality** - the standard and significance of the applicant's work is appropriate in order to establish that the relevant criteria have been met for the area of law and/or category being applied for.
- **Relevance** - ensuring that the examples cited relate to the criteria and requirements of the area of law applied for.
- **Recent** - examples of involvement within the last 3 years in a particular area of law (at the outside edge, 5 years)
- **Experience** - detailed dates and examples of matters which will demonstrate particular skills, knowledge and practice in an area of law.
- **Competence** - a demonstrable capability that the applicant can undertake the work involved in the category/area of law applied for. Factors include; quality of work, difficulty of cases, number and range of matters involved in, satisfaction of clients, performance in Court, quality of legal argument and timeliness in responding to Court, the Agency and the legally aided person. This may be corroborated by third parties.
- **Post admission legal experience** - holding a practising certificate and working within the area of law for which they are applying.
- **Assistance in the preparation** - demonstrable support and help in pre-trial matters for counsel involved in the proceedings.
- **Substantive and active involvement** - verifiable information about participation in particular cases demonstrating a significant and committed contribution to the matter. In most cases this would be interpreted as considerable input into the Court proceedings (such as examination or cross examination of witnesses; leading evidence, delivering opening and/or closing addresses) but substantial pre-trial contributions are considered on an individual basis.
- **Defended hearing** - a contested summary jurisdiction hearing before a Judge, Justice of the Peace or Community Magistrate.
- **Continuous experience or involvement** - uninterrupted practice in an area of law or at a particular level of experience.
- **Active participation** - demonstrated involvement in a matter, preparing and presentation of a case to a degree of proficiency in technical and strategic issues and which shows actual involvement with clients, witnesses, Police, the Court etc.
- **Significant preparation** - information which will exhibit a considerable and effective input into and involvement in the pre-trial and preparatory stages of a matter. (e.g. appearance at depositions, preparing case, brief witnesses, legal research, factual analysis, etc).