

Hutt Valley CLC fully fledged

Hutt Valley Community Law Centre (CLC) has reached an important milestone in its progress as a CLC serving the community of the greater Hutt Valley area. The Agency is pleased to announce, as a result of the recent evaluation, the centre is now a fully fledged CLC.

The Centre began in August 2001 as an outreach service of Whitireia CLC, with a local advisory committee. A charitable trust was incorporated in June 2002, and from August 2002 the Agency contracted with this trust to provide community legal services as a Pilot Centre under section 86 of the Legal Services Act 2000.

Since 2002 the Hutt Valley Centre has assisted individuals, families and groups with a wide range of legal problems, focusing on work not covered by legal aid for clients who have insufficient means to pay for legal services.

Casework covers a variety of legal issues, including consumer and debt, dealing with government departments, medical and

disability issues, employment issues, and immigration matters. Outreach clinics are held throughout the Hutt Valley at Wainuiomata, Naenae, Pomare, Stokes Valley and Upper Hutt. Local lawyers have provided support to the Centre.



The staff of Hutt Valley CLC (from left): Ulrich Schreyer, German graduate completing a placement with the Centre; Richard Small, Managing Solicitor; Aki Laukau, Receptionist; Richard Williams, Locum Solicitor; Penny Menhinick, Administrative Assistant; and Emily Maea, Senior Solicitor.

Public Defence Service Pilot

Assignment

Under the Statement of Service, the percentage of cases able to be assigned to the Public Defence Service Pilot (PDS) increased to 32% from 1 November 2004. Cases assigned to the PDS are comprised of preferred lawyer assignments, and up to 50% of assignments available "on rotation", based on the accumulated total number of assignments over time.

"On rotation" assignments to the PDS at the Auckland Court are currently below the permitted 50%. In order to restore the cumulative "on rotation" assignment percentage, additional assignments may be made at the Auckland Court, at a rate of 2 to the PDS and 1 to private providers, from time to time as needed to address this.

The additional assignments are in accordance with the PDS Assignment Guidelines.

The PDS has undertaken a total of 810 assignments in the Auckland Court and 782 in the Manukau Court for the period 3 May 2004 to 18 February 2005. This represents 25% 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.

Evaluation

The evaluation of the PDS being carried out by Victoria University's Crime and Justice Research Centre (CJRC) is on track.

The CJRC have met with private legal aid lawyers at two public meetings held in Auckland in November, and the Evaluation Advisory Group (EAG) has finalised the evaluation plan.

The two public meetings resulted in an agreement to expand the number of private providers invited to participate in stage one workshops, in order to capture a wider range of views earlier in the evaluation. These workshops with Agency staff, PDS staff and private lawyers took place in February.

Underway now are key stakeholder interviews, which will contribute to the report due later this year on the implementation of the PDS pilot. The full evaluation report is due to be tabled in Parliament within six months of its completion in late 2008.

User-friendly legal information

Under its Law-Related Education and Legal Information (LRE/LI) Strategy, the Agency acts as a gateway and/or central repository for user-friendly education and information resources for all. This role for the Agency derives from section 89 of the Legal Services Act 2000, which states:

“In order to promote access to justice, the Agency may provide or fund law-related education and legal information to the public or any section of the public”

Generally, the Strategy aims:

- to improve access to law-related education and legal information for the New Zealand public, especially those most at risk of experiencing unmet legal need
- to improve interagency collaboration in the delivery of law-related education and legal information services
- to support community law centres and other community agencies working in areas identified to have unmet legal needs.

As part of this, the Agency runs a consultation group with representation from community law centres, Citizens Advice Bureaux (CABs) and the Agency.

The Agency's implementation plan for 2004/05 covers four main areas of development.

1. *LawAccess* - a website-based online catalogue of law-related information with access to the resources of around 150 government and non-government organisations. The next phase of work for *LawAccess* involves:
 - an initial evaluation exercise to help inform how we develop the site
 - changes to the initial interface to make it more engaging, inviting and accessible
 - adding services such as 'I need legal help' including
 - a list of free-call services with a brief description of services they offer



Standing from left Choon Sze Kun, National CAB; Rahui Jatene, Te Ratonga Ture; Louise May, National CAB; Margaret Morrison, Community Law Canterbury; Colin Stanley, YouthLaw; Trish Hepburn, LSA. Seated Sacha Green, Wellington CLC; Janine McIntosh, LSA.

- an option to contact a legal aid lawyer, and
 - an option for people who lack confidence about what they need to ask and may not have the comprehension skills to be able to take it from the existing menus.
2. Law-related education kits - as part of its strategy, the Agency has undertaken to produce standardised training packages for the delivery of education sessions on certain priority law-related topics. In most cases the Agency works in partnership with relevant agencies to develop these resources. Topics covered so far:
 - Enduring Power of Attorney
 - Legal Aid and other legal assistance
 - Domestic Violence and Harassment Acts
 - Immigration (draft)
 - ACC (draft)

Other topics to be covered and in early planning stages are Waitangi Tribunal claims, Care of Children, Consumer Debt and Mental Health.

3. West Coast legal information initiative - the Agency has led a project on the Coast for sustainable delivery of legal information and law-related education. This involves coordinated information distribution supported by legal education seminars for community providers.

The project was set up in the Buller District with Buller Rural Education Activities Programme (REAP) coordinating the availability of legal information brochures and pamphlets in the area through key community organisations. This approach has been replicated in the Westland District, coordinated by Westland REAP.

To support the availability of legal information, Christchurch and Nelson community law centres provide law-related education seminars on the Coast, with topics determined from needs analysis carried out by Buller and Westland REAP staff. Other law centres also have an interest in the West Coast area; for example, Ngai Tahu Maori Law Centre provides information and education services on iwi matters in the area.

4. Standards development – the Agency is developing best practice standards for resources and delivery of LRE services. In doing so the Agency aims to:
 - raise the quality of these services and assure clients that systems are in place to address any quality problems that may arise, and
 - provide community law centres and other community agencies as appropriate with a set of quality standards and a framework for making improvements to their delivery of LRE/LI services.

In addition to the above, a major focus of effort will be the ongoing development of a broad legal information network, involving the community and government social service sector. This incorporates the Agency's participation in the Justice Sector Information Strategy.

New LARP form

The Legal Aid Review Panel (the Panel) has introduced a new application for review form, a copy of which is enclosed with this LSA News. The new form, for use from now, can be obtained from the Panel, any office of the Legal Services Agency or the website www.lsa.govt.nz.

The new form is a significant departure from the old and as such all copies of the old form should be destroyed immediately.

The new form requires applicants to address key issues carefully.

Please note the following:

The Panel is independent and separate from the Agency. Therefore, the only information the Panel has initially about an application for review is what is provided with the application.

Applicants applying for a review must be a legally aided person, an applicant for legal aid, a listed provider or a former listed provider.

The Panel looks carefully at its jurisdiction. Sections 54(1) and (2) of the Legal Services Act 2000 permits an aided person or an applicant for legal aid to ask the Panel to review a decision of the Agency about matters described in s54(2)(a) to (i) or s54(4). A listed provider may only apply to review a decision about the amount payable by the Agency (s54(3)). If the application does not seek a review of the types described, the Panel probably has no jurisdiction to consider it.

The application must identify by date, the decision or decisions the Agency made that the Panel is asked to review. The Agency's decision letter may contain one or more decisions; a copy of this letter should be attached to the application.

Has the application been filed in time? If applicants need to make an application to extend the time they will need to complete the section at the end of the form.

The Act permits 20 working days for the review to be filed from the date on which a decision is received by the person affected. (A "working day" is defined in the Interpretation Act 1999.) The Convenor has discretion to extend the time for filing beyond 20 working days but the onus rests on the applicant to persuade the Convenor that appropriate grounds for the exercise of the discretion exist. The Convenor generally looks at the length of the delay, the reasons for it, the merits of the substantive application and the existence of any prejudice to others (usually the Agency) affected.

Section 54(1) gives the Panel two grounds only on which to review an Agency decision, i.e. the decision was either "manifestly unreasonable" or "wrong in law". The new form requires applicants to identify which of the two grounds they rely on. Both grounds can be indicated.

The form then requires applicants to explain why the decision is either manifestly unreasonable or wrong in law. A brief note explaining what the High Court has said about the meaning of "manifestly unreasonable" and "wrong in law" is shown at the end of the form.

The High Court has made it clear that the Panel cannot substitute its view for that of the Agency unless the Agency's decision was either manifestly unreasonable or wrong in law. If an applicant supplies the Panel with information the Agency did not have then, almost inevitably, if the application has merit, the Panel will ask the Agency to consider the matter afresh, taking into account the new information.

The Panel can confirm, modify or reverse an Agency decision. If an applicant wants the decision modified s/he must tell the Panel what s/he thinks should happen.

The Panel has, in the past, accepted incomplete applications and given applicants a short time to remedy this. Applicants will now need to ensure that an application is complete and full information is provided.

D Julian Maze, Convenor LARP

The Panel is made up of the administrator, a Convenor and 30 panellists, both lawyers and lay people. Over the course of a year the Panel will deal with over 400 applications for review.

The review process normally takes about 8 weeks to complete.

The process involves:

- a initial check of the application to ensure that the Panel has jurisdiction and it has been made within time;
- the Panel asking the Agency for its submissions and copies of the relevant papers;
- on receipt of the Agency's submissions a copy is provided to the applicant who can then make submissions in reply;
- allocating a panel (normally a lawyer and a lay person) to consider the application and write a decision.

LARP quarterly update

Applications for review by the Legal Aid Review Panel (LARP) comprised 0.14% of legal aid applications, amendments, and claims received by the Agency during the last quarter (October - December 2004).

Of the 54 decisions made by the Panel in that period, 28 (52%) upheld the Agency decision, 11 (20%) reversed the Agency decision, 2 (4%) modified the Agency decision, 11 (20%) directed the Agency to reconsider the decision and 2 (4%) were for other reasons.

Between October and December, 44 (82%) of the reviews were requested by the legally-aided person. 24 (44%) of the reviews related to an Agency decision to decline aid, 26 (58%) related to an Agency decision on the amount of legal aid, 3 (6%) related to an Agency decision on the conditions on the grant, and 1 (2%) was for other reasons.

Appeals

Judgement for three appeals of LARP decisions were received in this quarter.

In the Mansell case the legal aid applicant appealed to the Court of Appeal after a judgment of the High Court upheld the decision of the LARP (*Mansell v Legal Services Agency* (12 November 2004) CA, CA167/03, O'Regan J). The Panel had upheld an Agency decision to refuse legal aid as the legal matter had been concluded before the application for a grant had been received. The appeal was dismissed and thereby confirmed that section 12(c) of the Legal Services Act 2000 prohibits the Agency from considering an application for legal aid after the final judgement in the proceedings to which it relates.

The Kilpatrick case was heard in the High Court in July 2004 and a judgment received in November (*Legal Services Agency v Kilpatrick* (18 November 2004) HC Auckland, CIV 2003-404-006866, Cooper J). In this case, the LARP had reversed a

decision to decline legal aid for a Family Court matter which it deemed as being wrong in law.

The Court upheld the first ground of appeal which was that the Agency was required under s9(4)(d)(i) of the Legal Services Act 2000 to assess prospects of success, but there was nothing in the Act to support the proposition that a decision on the written evidence is only acceptable where the written evidence is so conclusive and compelling, that only one outcome is reasonably possible. The Court also upheld the second ground of appeal that the Panel had substituted its view of the merits of the case for that of the Agency. The Court dismissed the third ground of appeal that LARP had given inadequate reasons. On the subject of reasons, the Court indicated that the Agency should give brief reasons in a reconsideration decision.

Also received in November was the judgment from the High Court in an appeal taken by the Agency in the case of K (*Legal Services Agency v K* (5 November 2004) HC Christchurch, CIV 2004-4042675, Chisholm J). Here the Agency had declined aid for a case concerning the discharge of an order placing children in CYF care on the grounds of s9(4)(d)(i) (prospects of success not sufficient). The LARP decision had reversed the Agency decision as wrong in law.

The Court upheld the first ground of appeal, confirming that the Agency has a statutory duty to assess prospects of success and weigh benefits of action against likely costs involved. The Court also upheld the second ground confirming that there is no statutory justification for different types of cases being subject to different tests of prospects of success. The third ground for appeal related to matter of fact rather than law, so was not considered further. The Court upheld the fourth ground for appeal that the Panel had substituted its view of the facts for the view taken by the Agency.

Form 5 revised

Form 5 accompanies an application form for civil or family legal aid, and is used by providers to submit information about the legal case.

Form 5 is currently being reworded and reformatted with the aim of making it clearer and easier to use for providers, and also to help ensure the Agency staff have the information upfront that they need to make a decision. Both lawyers and Agency staff have provided suggestions for improvements.

The new version will be available on the website from 18 April 2005. All civil and family law providers are encouraged to access the new version.

While most civil and family law providers use Form 5, some providers elect to submit the same information in a letter. This is acceptable to the Agency if the same headings are used and the full summary of information about the case is provided. The actual application for aid must still be submitted on Form 6 (Application -Civil/Family Legal Aid).

