

CONTENTS :

Legal Services Amendment Act
PDS Update

Review of initial criminal legal services
Criminal legal aid
Mileage rates increased

Random audit results
LawAccess
One-off listing approval process

Legal Services Amendment Act Implementation

The project to implement the Amendment Act is making significant progress on all fronts. From a provider perspective, policies are close



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to being finalised with valuable input from the Legal Services Committee at the New Zealand Law Society. Procedures and operational guidance are also being developed to provide clarity for staff to be able to put the policies into practice consistently. Once the policies are finalised they will be available, with other guidance, for listed providers.

Training

Work is continuing with the New Zealand Law Society's Continuing Legal Education team on the development of a legal aid training module for providers. It will be offered in a series of seminars throughout the country in February 2007. Further information and confirmation of times and dates will be sent out through the usual NZLS channels.

Regulations – the regulations for the Legal Services Amendment Act 2006 have been published on the www.legislation.govt.nz website. You can click on Statutory

Regulations, 'L' then scroll down to Legal Services Regulations 2006.

New office opens

The Legal Services Agency's new office at Waitakere was officially opened this month. The picture below is of LSA Chair, Carole Durbin speaking to staff and guests at the opening on 6 September.

In brief

Attestation streamlining proposals, designed to reduce the amount of documentation required for applications, amendments, and invoices is being circulated to an internal advisory group and selected providers for comment.

All of the **policies** to support the implementation of LSAA

2006 have gone to the Board for sign off, and they're now being finalised.

Several providers from Auckland, Hamilton, Christchurch and Wellington are reviewing a second draft of the **application forms**. Their feedback will be included in the next version of the forms.

The first draft of the procedure to determine **Eligibility** has been circulated for comment, and work is underway on Conditions on a Grant. The next procedures to be worked on will be Interest and Settling Debt, then Debt Write Off.

Plain English **letters for debt** are being developed.



LSA Board Chair Carole Durbin speaking to guests and staff at the opening of the new Waitakere office.

Mileage rates increased

The reimbursement rate for road travel claims by providers has been increased from 62 cents per kilometre to 73 cents per kilometre.

This increase is effective immediately and is payable for any claims for travel from 4 September 2006.

The LSA Board increased the rate to 73 cents to reflect increasing travel costs and the higher rates used by other public sector organisations.

Review of Initial Criminal Legal Services

Administrative changes to the Duty Solicitor Scheme

The testing of administrative changes to the duty lawyer service at Waitakere court has now been underway since mid July. The essential features of the test are:

- Five duty lawyer supervisors have been appointed and are responsible for the overall management and operation of the duty lawyer service at the court.
- The duty lawyer roster is now team-based with duty lawyers rostered on the same day each week
- Duty lawyer numbers have been reduced to a more manageable level through seeking 'court of first preference' information from duty lawyers and subsequently limiting duty lawyers to one only of the Waitakere, Auckland and Manukau court rosters. This means that duty lawyers can be rostered more frequently at one court rather than less frequently over two courts.
- Participation on a roster and eligibility for category 1 & 2 rotation assignments has been de-linked. This change has also helped to reduce over-crowding on the roster.
- An LSA staff member has been appointed for the period of the test to help defendants fill in their applications for criminal legal aid.

Planning for the test at Auckland District Court

Preparations for the Auckland District Court test are well advanced and in early September the Agency announced nine duty lawyer supervisor appointments. Two senior Auckland lawyers took part in the appointment panel.

Duty lawyers and duty lawyer supervisors were represented at a court stakeholder group meeting. There were also representatives from the NZ Law Society, Auckland District Law Society, Police prosecutions, court-based community groups, Ministry of Justice (Courts), Department of Corrections (Probation) and local Agency staff. In August the Agency met separately with Auckland court duty lawyers to discuss the implications of the test. Proposals for making improvements to the Saturday rosters are also under discussion.

As a first step towards the Auckland District Court test, a roster with reduced duty lawyer numbers has been operating since mid July. Now that the duty lawyer supervisor appointments have been made, a team-based roster will be prepared in consultation with the supervisors. The test will begin with the start of the new roster in mid October.

Preliminary meetings held in Wellington

Preliminary meetings about the forthcoming test at the Wellington District Court were held in late August. Meetings were held with the Wellington District Law Society's Courts and Tribunals Committee, Judges, Prosecutors and Courts staff.

Revised assignment procedures at the Auckland and Waitakere District Courts from 17 July 2006

From 17 July 2006 a revised procedure for assignment categories 1 & 2 rotation grants came into effect at the Auckland the Waitakere District Courts as part of the duty lawyer tests.

Key points are:

- Practitioners are no longer required to be on the duty lawyer roster of the court to be eligible for assignment of categories 1 & 2 rotation grants.
- All other provisions of the current assignment procedure at both courts remain. Practitioners are still expected to indicate to Agency staff at the court their availability to accept assignments on a particular day. Agency staff are following existing practice when assigning rotation cases (with the exception of the duty lawyer requirement).

More detailed information on the assignment procedure from 17 July can be accessed from the Agency's website www.lsa.govt.nz. (On the homepage click on the Quicklink: Initial Criminal Legal Services.)

These changed procedures do not currently affect the other District Courts within the Auckland metropolitan area, i.e. the Manukau, North Shore, Papakura and Pukekohe District Courts. At these courts practitioners are still required to be on the duty lawyer roster to be eligible to receive categories 1 & 2 rotation assignments.

Police Detention Legal Assistance (PDLA) Scheme Improvement Project

The Agency is proposing to undertake testing of administrative changes to the PDLA scheme in Auckland and consultation about proposals is currently being undertaken with the profession and with Police.

The proposed changes for testing in Auckland relate to rosters and are intended to improve the availability of PDLA lawyers. The changes include testing a system where specific types of cases (such as drink-drive or when a young person is involved) would be handled by providers rostered specifically for such cases. Existing contact arrangements, with Police making contact with the PDLA lawyer, will remain for the tests. If testing proceeds, implementation would commence with a review of current listings when all existing providers in Auckland would be contacted.

The Agency is also discussing possible training for the scheme with the New Zealand Law Society's Continuing Legal Education section, and is working with police on managing peaks in demand for PDLA services. The Agency will also work with the profession to develop guidelines for personal attendance under the scheme.

You can access the Terms of Reference for this stage of the project on the Agency's website www.lsa.govt.nz under Quicklinks: Initial Criminal Legal Services Projects. If you have any comments or queries, please contact the project manager, Angela Cook, angela.cook@lsa.govt.nz.

PDS Update

The Public Defence Service pilot has notched up its 5000th assignment since the project began just over two years ago.

There are 16 lawyers working from the two PDS offices – one in Auckland City and the other at Manukau.

In the 5000 assignments, the PDS has acted in:

- More than 100 Summary Defended Hearings with more than 60% dismissed
- 43 defended jury trials, including
 - 23 acquittals
 - 4 hung juries
 - 6 discharges in absence of jury

This is a success rate of over 75%.

When the Legal Services Agency set up the pilot, the main aims were to provide high quality, consistent, independent, value for money services to legally aided people charged with criminal offences.

The performance measures are assessed in the Annual Report, which is due to be tabled in the House in October.



The Minister of Justice, Hon Mark Burton during a recent visit to the Public Defence Service office at Manukau. Pictured, from left to right, Michael Corry – Public Defender, Charles Chauvel – Labour MP, Hon Mark Burton – Minister of Justice.

There is more information and reports about the Public Defence Service on the LSA website – www.lsa.govt.nz

Random audit results

Each year, under section 78 of the Legal Services Act 2000, the Agency undertakes a random audit of providers to help ensure that legally aided clients are receiving services of a reasonable quality and value.

For the 2005-2006 year, a file-based random audit was undertaken, looking at 114 individual cases where claims paid by the Agency totalled more than \$1500.

Overall the Agency was satisfied with the standard of files audited, with the auditors assessing that 3% represented poor value for money, and 3% represented an unsatisfactory standard of file maintenance.

The Agency was pleased to note that there appeared to be no significant issues with:

- Recovery of fees from the aided person pursuant to s28(4) of the Legal Services Act 2000 (Act)
- Accuracy of invoicing
- Protection of the Agency's interests under s68 of the Act.

Recurrent issues that concerned the Agency were:

- Lack of time records or unclear time records, making reconciliation with billing difficult
- Lack of Agency approval for delegation of non-minor matters by the lead provider.

Issues occurring less frequently included:

- Timeliness of applications for legal aid
- Timeliness of billing the Agency for work undertaken
- Timeliness of communication with the Agency, and keeping the Agency informed of changes in clients' circumstances
- Keeping clients informed of progress on their cases
- Notifying Courts and other parties of a legal aid grant
- Retention of files for a minimum of three years as specified in the Contract for Services

The Agency would like to remind all providers of the need to ensure that legal aid files clearly reflect the work undertaken, and that all relevant documents, including time records, are maintained on each file in a logical manner.

The Agency thanks those providers who were audited for their cooperation and assistance during the audit. A similar sample of files will be audited for the 2006-2007 year.

From the Debt Management Group

Release of Statutory Land Charge

What is required?

- a copy of the Notice of Statutory Land Charge (required only, if the charge is registered under the Legal Services Act 1991) which can be obtained from LINZ
- the legal aid file number – this can be found on the Notice of Statutory Land Charge document or obtained from any local legal aid office
- a draft Release of Statutory Land Charge
- a solicitor's undertaking (not required, if there is no debt owing).

Please allow 10 working days for processing of the release.

Where to send the documents?

- if the Statutory Land Charge is registered under the Legal Aid Act 1969 or the Legal Services Act 1991, all correspondence should be sent to the Debt Management Group.
- if the Statutory Land Charge is registered under the Legal Services Act 2000, all correspondence should be sent to the legal aid office holding the file. Any local legal aid office may assist with finding the correct office.
- if the transaction involves several releases of Statutory Land Charges under different Acts and/or files with different legal aid offices, all correspondence should be sent to the Debt Management Group.

What happens next?

- the Agency will check the documents and, if they are correct, seal the release and return it for registration with LINZ
- any remaining debt needs to be repaid to the Agency
- in the event that the remaining debt cannot be repaid, the Release of Statutory Land Charge needs to be returned to the Agency unregistered.

Sample solicitor's undertaking:

I/We undertake to hold the release unregistered until I am/we are in a position to repay in full the debt owing to the Legal Services Agency and I/we further undertake to keep the Legal Services Agency's interests protected at all times pending such repayment.

Payments to the Agency can also be made by internet banking selecting Legal Services Agency as a payee. For all direct credit payments, an email transaction confirmation needs to be sent to recoveries@lsa.govt.nz to make sure that the payment is credited in the Agency's computer records.

Providers are advised against over-the-counter bank payments, as they are difficult to trace and may not be credited to the correct debt.

The Debt Management Group can be contacted as follows:

Legal Services Agency – Head Office
Debt Management Group
Prime Property Tower
86-90 Lambton Quay
PO Box 5333
WELLINGTON
DX SP22526
Tel +64 4 499 1328
Fax +64 4 471 2431
Email: recoveries@lsa.govt.nz

This information has also been added to the LSA website at www.lsa.govt.nz/ListedProvider/policies/ContributionsAndCharges.htm

LawAccess

Users of the enhanced LawAccess website, www.lawaccess.lsa.govt.nz have given the changes the thumbs up. Contributors like the new look and feel and say LawAccess is a valuable resource. "Congratulations, the new site looks great! I continue to be impressed by how easy it is to use and update," Broadcasting Standards Authority, LawAccess contributor.

Latest site monitoring stats suggest an increased awareness of the site online

as more visitors use the LawAccess url directly or have it bookmarked. Since the changes, we've also had requests from new organisations wanting to provide information on the site.

The latest changes were designed around feedback from contributors to the site. They wanted a site that was more user-friendly and more appealing to view.

The type of information on the site has also been enhanced with the addition of the 'Talk to Someone' page. Here you'll find information about who to talk to in



your community about legal issues. It includes contact details for Community Law Centres, links to the CAB network and can now help you find a lawyer via the New Zealand Law Society.

LawAccess is an online catalogue of New Zealand law-related information. It is a gateway to more than 1000 resources with information on rights and responsibilities under specific laws.

Bail with Electronic Monitoring

Bail with Electronic Monitoring is a new initiative and will be available to people who have had bail refused or have been remanded in custody because bail was not sought pre-trial. This will allow the person to be released back into the community subject to being monitored electronically during the remand period along with any other conditions the Court specifies. The process involves the applicant completing a 6-page application form, an assessment by a bail assessor and a bail hearing by a Judge. The Police will be managing the bail application and assessment process.

Agency's Interim Policy

The Agency's policy is interim at this stage, as bail with electronic monitoring is completely new and is being rolled out in phases (see below).

The Agency will fund legal services related to bail with electronic monitoring on the following basis:

- Up to 1 hour preparation time at the GHR. Preparation time may include: discussion with the client, taking instructions, completing the E Bail application form, ensuring the applicant understands the conditions, and possible telephone calls to the resident at the proposed address to confirm details;

Or

- Up to 1.5 hours preparation time if the provider visits the proposed residential address.

Plus

- Travel time and travel costs to attend the client

The maximum travel to attend the client is expected to be 1.5 hours (return trip). If travel to attend the client takes longer, it will generally be considered preferable for a local agent to attend the client. Prior approval should be sought for more than 1.5 hours. The Agency will assess this on the basis of the costs.

Plus

- Travel time and travel costs, if the proposed residential address is visited.

The maximum travel to the proposed residential address is expected to be 1.5 hours (return trip). If the travel takes longer, it will generally be considered preferable for a local agent to attend the client. Prior approval should be sought for more than 1.5 hours. The Agency will assess this on the basis of the costs.

Plus

- Actual hearing time.

The Agency's guideline amounts can be exceeded in special circumstances. Each case will be determined on a case-by-case basis.

If there are subsequent applications for the same client, 30 minutes additional preparation time at GHR and travel time and costs will be considered and additional hearing time will be paid.

When will this happen?

An indicative roll out is as follows:

- 25th September 2006; Auckland, Counties-Manukau, North Shore, Waitakere, Rodney and Northland.
- 6th November 2006; Bay of Plenty, Waikato, Eastern, Central and Wellington.
- 27th November 2006: Canterbury, Tasman and Southern.

If providers have further questions about E bail, they should contact to be confirmed by the Police.

The Agency's maximum rates can only be exceeded in special circumstances. Providers will need to submit a completed Form 2 Estimate for criminal proceedings and a covering letter advising the reasons for seeking a grant in excess of the maximum rate. When you have received form 2 and the covering letter, you may refer the file to a specialist adviser for a recommendation.

If there are subsequent applications for the same client:

- 30 minutes additional preparation time at GHR and
- Additional hearing time will be paid
- Travel time and costs will be considered.

Implementation

The interim policy is to be implemented in each region according to the following timetable:

- 25th September 2006; Auckland, Counties-Manukau, North Shore, Waitakere, Rodney and Northland
- 6th November 2006: Bay of Plenty, Waikato, Eastern, Central and Wellington.
- 27th November 2006: Canterbury, Tasman and Southern.

Clarification

If providers have any questions about EM bail, they should contact the local office of the Police Prosecution Service.

If you have any questions about the interim policy, please contact Tara Sewell or Andrew Harbidge at Head Office 04 4955 910.

New Form: confirmation of benefit

The confirmation of benefit form used by providers to obtain benefit information for the Agency has changed. The Agency worked with the Ministry of Social Development to simplify the form while still providing the information required. The main difference you will see is that there is only a total benefit income amount to fill in, rather than the dollar amount for each benefit over the 12 month period. You can also email the form to Work and Income. The new form can now be used and you can obtain a copy from the Agency's website: www.lsa.govt.nz/ListedProvider/forms/documents/LEGALAIDCONFIRMATIONOFBENEFIT_000.doc

One-off listing approval process

Occasionally situations arise where a one off listing of a Provider may be required for a particular case. A one-off listing enables the Grants Office to assign or reassign that specific case to the Provider. These situations are rare and certain circumstances must exist before it happens. The circumstances are:

- The Provider has demonstrated in the application that they have the experience to take on the assignment, and
- There are no other appropriately listed Providers available to take on the assignment, and/or
- The Provider can demonstrate that they have already undertaken significant (>8 hours/one full day) work on the matter, or
- The Provider can demonstrate that they have an established relationship with the legal aid client.

A Provider requesting a one-off listing must first apply to the Provider List Administration – email provider@lsa.govt.nz or call 04) 495 5910, outlining their reasons. Any one-off listing decision will be made in conjunction with the local Grants Office, and with input from the Local Consultative Group when time permits. One-off listings can only be approved for lawyers who have a current Contract for Services with the Agency.

The one-off listing process was implemented on 5 September 2006, and is essentially documenting the Agency's current practice.

Extended Supervision Orders

Providers are reminded about the clarification on legal aid for Extended Supervision Orders included in the Provider Manual Update in July 2006. The remuneration for these is 3 hours at GHR plus hearing time.

The Provider representing the client in extended supervision matters must have a PC rating at the same level as the original matter, or higher.

A disbursement for a specialist report may be granted if the provider can identify specific problems with the psychological report obtained by the Department of Corrections. The request for the disbursement should be made with the application, to streamline the process.

Mangere Law Centre celebrates

The Mangere Community Law Centre celebrated its 20 birthday at the end of September with a move into new premises.

The first two lawyers to work at the centre were told it was not a good career move, however their names will be familiar to many in the profession. Andrew Becroft is now Chief Youth Court Judge, and Johnny Moses is prosecuting for the United Nations International Criminal Tribunal for Rwanda.



From L to R Lynn Chua (Solicitor) Rosina Hemi (secretary) Nina Muller (Education worker) Emma Tuiga (Reception) Bill Alden (manager) Ida Tupaea (Community worker) Andrew Becroft (Chief Youth Court Judge and co-founder) Gardenia Atimalala (Solicitor) Dave Colbert (Chairperson) Marion Ulu (Solicitor) Jane Daldy (Solicitor) Robyn Ng Chok (Secretary) Gillian Guptill (Solicitor)

LARP

David Julian Maze has been reappointed as the convenor of the Legal Aid Review Panel for a three year term, commencing 1 February 2007.

